H.R. 3866—NOT-FOR-PROFIT SHELTERED WORKSHOPS

HEARING

BEFORE THE

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

OF THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

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CONTENTS

	Page
Hearing held on June 3, 1986	1
Opening statements of:	
Mitchell, Hon. Parren J., chairman, Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems	1
Mrazek, Hon. Robert J., a Representative in Congress from the State of New York, accompanied by Paul R. Bjorklund, legislative assistant	2
Testimony of:	
Barres, Norman O., president, Goodwill Industries of Western Connecticut, Bridgeport, CT, on behalf of National Association of Rehabilitation Facilities	23
Bremner, Lockley, vice president, Blackfeet Indian Writing Co., Inc., Browning, MT	84
Erickson, Charles, Kansas City, KS	63
Gashel, James, director, Governmental Affairs, National Federation of the Blind, accompanied by Charles Erickson, Kansas City, KS, and Bonnie Peterson, Milwaukee, WI	34
Harrison, Monika Edwards, Associate Administrator for Procurement Assistance, Small Business Administration	7
Martin, Edwin W., president and chief executive officer, Human Resources Center, accompanied by William H. Smith	26
Offenhartz, Harry, Fraass Survival Systems, Inc., Bronx, NY, accompanied by Colin Offenhartz	108
Peterson, Bonnie, Milwaukee, WI	69
Schapiro, Daniel & Co., Baltimore, MD	83
Smith, William H., senior manufacturing engineer, Abilities, Inc	30
Wolk, William P., executive director, Work, Inc	14
Additional material submitted for the hearing record:	
Bjorklund, Paul R., legislative assistant to Hon. Robert J. Mrazek: Response to chairman's question	6
Bremner, Lockley, vice president, Blackfeet Indian Writing Co., Inc., Browning, MT: Prepared statement with attachments	86
Erickson, Charles, Kansas City, KS: Prepared statement	65
Gashel, James, director, Governmental Affairs, National Federation of the Blind: Prepared statement with attachments	37
Harrison, Monika Edwards, Associate Administrator for Procurement Assistance, Small Business Administration: Prepared statement	9
Martin, Edwin W., president and chief executive officer, Human Resources Center: Response to chairman's question	33
Peterson, Bonnie, Milwaukee, WI: Prepared statement with attachments	70
Wolk, William P., executive director, Work, Inc.: Prepared statement	17

APPENDIX

A. H.R. 3866	113
B. Statement from George J. Mertz, president, National Industries for the Blind	116
C. Letter from James W. Wells, president, The General Council of Workshops for the Blind	128
D. Statement received from DeWayne Robertson, president, Louisiana Association for the Blind	133
E. Rebuttal to testimony of Ms. Bonnie Peterson and Mr. Lockley Bremner, from Claude W. Hirsch, executive vice president, Industries for the Blind, Inc	142
F. Prepared statement from Eivind H. Johansen, president, National Industries for the Severely Handicapped, Inc	165
G. Prepared statement of Barry J. Trilling, Trilling & Kennedy, attorneys at law, on behalf of representative small businesses	182

H.R. 3866—NOT-FOR-PROFIT SHELTERED WORKSHOPS

TUESDAY, JUNE 3, 1986

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS, COMMITTEE ON SMALL BUSINESS,

Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2359-A, Rayburn Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. MITCHELL. Good morning.

Today we will hold hearings on H.R. 3866,[1] a bill introduced by Mr. Mrazek that would allow not-for-profit workshops to participate in the Small Business Set-Aside Program in an amount not to exceed $100 million a year. The bill, in effect, would make permanent a pilot program that expired at the end of fiscal year 1983 after a total of 4 years of operation.

We shall, of course, hear from the author of this measure, and wish to note for the record his deep sensitivity and unflagging support for the interests of the blind and handicapped.

That is one of your hallmarks in this Congress, and certainly your work in that area is to be commended.

In addition to Mr. Mrazek, we shall receive testimony from the Small Business Administration, and three panels of witnesses.

Let me say to the witnesses, you have done something unusual. All your testimony was received in plenty of time. We have had an opportunity to read your testimony. Therefore, when you testify this morning, we would appreciate it if you would hit the highlights because we have already had the benefit of reading your testimony.

Our selection of the panel of witnesses was intended to solicit the full range of interests this subcommittee must consider during its deliberations on H.R. 3866. We shall not approve or disapprove any measure dealing with this issue until we first explore and define the legitimate interests of the workshops, of their employees, and of for-profit small business.

Finally, I want to make it clear that I do not consider—and I don't think anyone should—I do not consider H.R. 3866 as a vehicle

[1] See H.R. 3866, app. A, p. 113.

that should be used to correct every shortcoming in the administration of the Javits-Wagner-O'Day Act or to address any other problem of similar breadth and complexity.

We are concerned, this morning, only with small business set-asides, whether not-for-profit workshops should be able to compete for a share of that market, and, if so, under what terms and conditions.

I would like to thank our witnesses for taking the time out of their busy schedules to be with us today. The subcommittee looks forward to receiving the benefit of their views.

Does my colleague have an opening statement this morning?

Mrs. MEYERS. I am glad to be here. I have a constituent who will appear on one of the panels, and I look forward to hearing the testimony.

Thank you.

Mr. MITCHELL. Thank you.

Congressman, we are ready to receive your statement.

OPENING STATEMENT OF HON. ROBERT J. MRAZEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED BY PAUL R. BJORKLUND, LEGISLATIVE ASSISTANT

Mr. MRAZEK. Mr. Chairman and members of this committee, I want to thank you for giving me the opportunity to testify on behalf of this bill which will allow sheltered workshops to once again compete for Government procurement contracts.

I am aware of your deep commitment to working on behalf of the severely disabled in this society.

Mr. MITCHELL. May I interrupt you just a moment? I think you are going to have to speak more directly into the mike. I don't think those in the back can hear you.

Mr. MRAZEK. As you know, until September 1983, sheltered workshops, nonprofit organizations which employ severely handicapped people were allowed to submit competitive bids for Government contracts under the Small Business Act. Efforts were made in the last Congress to restore authorization for this provision, and legislation was passed by both the Senate and the House. Unfortunately, the proposal died in conference for reasons unrelated to the merits of the legislation. Between 1981 and 1983, a total of $37.5 billion in contracts were awarded and approximately $10 million were won through competitive bidding by these sheltered workshops. That is less than 3 cents out of every $100 in contracts awarded to small businesses in the United States of America.

I find it incredible that that kind of commitment could be considered somehow disadvantageous to small businesses in America looking to compete for Government contracts.

This bill is cosponsored by 57 of my colleagues, and is supported by all of the major organizations representing the severely handicapped, including: The Association for Retarded Citizens of the United States, Goodwill Industries of America, National Association of Jewish Vocational Services, National Association of Rehabilitation Facilities, National Easter Seal Society, United Cerebral

Palsy Association, and National Industries for the Severely Handicapped.

What we are trying to do is to rectify an aberrant situation in which the most severely handicapped citizens of our Nation have been shut out of a program that has enormous potential to improve their lives. Under the Small Business Act, only for-profit companies may compete for set-aside procurement contracts. Since sheltered workshops are chartered as nonprofit organizations, they are excluded from this process. H.R. 3866 would simply carve out a narrowly defined exception to this rule to allow organizations operating on behalf of handicapped individuals to compete for these contracts.

Mr. Chairman, you are going to be hearing a good deal of testimony both for and against this bill. I have no doubt about the sincerity of the beliefs of those who might oppose this bill. Undoubtedly, some small businesses would lose contracts to sheltered workshops if this legislation is passed, just as workshops would lose some contracts to small businesses. I have no doubt that many small businesses ordinarily hire the blind and handicapped and that many of the businesses obtaining contracts through the Small Business Set-Aside Program routinely hire minorities and others who might otherwise find employment difficult. For this they are to be highly commended.

However, what should be made perfectly clear at the start of this hearing, and what I hope you will remember as you listen to the testimony today, is exactly who the people are that this legislation is designed to help. Workshops, as nonprofit organizations, do not hire disabled people to do a job—they locate jobs to provide employment for people whose mental and/or physical disabilities are so severe that they cannot hold a job in the competitive marketplace.

The individuals we are talking about are not the disabled people who work in a competitive environment. We are not talking about the disabled people who work in a drugstore or on the production line of a for-profit business. They are the people who are severely disabled, whose physical and/or mental impairment is, by definition, so severe that they cannot, in their present state, be employed in the competitive marketplace.

Their handicaps include such disabilities as mental retardation, multiple sclerosis, cerebral palsy, muscular dystrophy, autism, neurological damage caused by trauma, and severe emotional instability. The workshop to them is, in actuality, an employer of last resort.

These are perhaps the most disadvantaged citizens in our country, people who all too often are simply forgotten, relegated to a life at the periphery of society. For too many of us, it is difficult to look beyond the handicaps these people struggle with to survive—to see and understand that they are individuals with similar needs and desires as any normal person. The pride and dignity, and sense of self-worth that comes from holding a job, from working, is just as real and important for the severely disabled as it is for the rest of us. By enacting this bill, we would create many more opportunities for sheltered workshops to find jobs for these handicapped individuals.

Current programs, such as that provided by the Javits-Wagner-O'Day Act, have done a superb job of providing employment and training options needed by people with severe disabilities. But they need more.

The Department of Labor estimates that there are about 5,000 workshops in the United States today. Approximately 40 percent of those workshops, about 2,000, have no meaningful production capability now, nor will they have meaningful capability in the future. Roughly 300 of the remaining 3,000 workshops are doing JWOD work for the Government. The balance of these programs desperately need jobs for their employees to do, and since they cannot now bid on the small business set-asides, they are effectively shut out from a large portion of the Government market. Even the successful JWOD workshops need more jobs to handle the volume of severely disabled people they deal with.

For a variety of reasons, many of the contracts set aside for small businesses are not suitable for JWOD. JWOD has a number of specific legal requirements and restrictions which limit the kinds of items that can be set aside under the JWOD legislation.

To name just a few, workshops cannot, under JWOD, consider one-time contracts, contracts requiring assembly only, items not purchased centrally, and items not governed by federally controlled specifications. As a result, without the opportunity to bid on small business set-asides, these opportunities are lost to workshops.

Allowing workshops for the severely handicapped to participate in the Small Business Set-Aside Program would provide a valuable adjunct to JWOD for those workshops able to compete in the marketplace. If a workshop has the experience and capability to immediately bid for a contract, and can do quality work at a fair, competitive price while it employs people with severe disabilities, why should it be precluded from doing so? By allowing workshops to participate in small business set-asides, our Government reaps both a cost and social benefit.

It is the contention of some small businesses that workshops for the handicapped present unfair competition since they pay no taxes and employ workers at subminimum wages. This charge neglects to take into consideration the many obligations which add significantly to the workshop's overhead costs in running a small business operation. Workshops incur many costs directly related to the severe disabilities of their employees. Rehabilitation and social services provided include personal adjustment training, diagnostic vocational evaluation, help with personal health and hygiene, counseling, job placement, transportation, and independent living services. Additional costs are incurred because of the need for increased supervision, extra training, and special machinery and equipment.

These extra burdens on workshops far outweigh any advantages they might gain because of their nonprofit status. Various studies corroborate this point, including a 1981 General Accounting Office report and the independent Greenleigh Study commissioned by HEW.

Another misconception concerns the minimum wage issue. There seems to be a preception that because workshops do not have to pay their employees the minimum wage, they are able to shave

their production costs and underbid a competitor to win a contract. This is not true. It is true that not all workers in a workshop are paid a mnimum wage, but the Fair Labor Standards Act allows special certificates to be issued by the Department of Labor which require that workers with severe disabilities who are not paid minimum wages be paid on the basis of their productivity. Under these criteria, the direct labor costs in a workshop will generally be the same as in private industry since the rate paid to the severely disabled person is relative to his/her productivity, that is, a worker with 50 percent productivity will be paid $2 per hour for a job usually paying $4 per hour to a person without a disability. However, the overall productivity of a workshop is generally much lower than that of a small business since many more workers must be employed to accomplish the same amount of work. Extra workers increase overhead costs because of the need for more supervisors, more workspace, increased use of utilities, and more equipment and work stations.

Some opponents of this legislation charge that because workshops receive public and private contributions, they are able to use them as subsidies which then permit them to underbid their for-profit competitors. Workshops do rely on public and private funds to offset their additional operating costs. However, because of the additional services workshops provide, the 1981 GAO report concluded that, "As a result, many nonprofit corporations operating sheltered workshops would not be able to operate without receiving other sources of income." I would also point out that the special wage certificates authorized by the Department of Labor are issued contingent on the condition that workshops may not compete unfairly in the sale of their products. The Department of Labor is charged with the responsibility of determining if a workshop is engaged in the practice of undercutting commercial industry by selling its products at unfair competitive prices. Any small business that feels that workshops are undercutting commercial sources may ask the Department of Labor to investigate.

Another point that I would like to make concerns the potential economic impact on for-profit small businesses.

There are now approximately 5,000 workshops in the United States and 14 million small businesses. I find it incredible that it could be suggested that a set-aside of the type that we are talking about could be construed as any kind of a fiscal or economic threat to those 14 million small businesses.

In the last 3 years that we had the set-aside program, 1981 to 1983, we had $37.5 billion in contracts, $10 million went to these workshops—less than 3 cents out of every $100.

Mr. MITCHELL. Excuse me; $10 million but there was another sum of money you mentioned earlier that they have gotten, I thought.

Mr. MRAZEK. No; it was $10 million, less than $10 million went to workshops under the set-aside program out of $37.5 billion over that 3-year period.

Mr. MITCHELL. Do you know what they got other than through set-asides?

Mr. BJORKLUND. I don't have that figure here. We can provide it for the record.

[The information follows:]

In 1981, National Industries for the Severely Handicapped [NISH] obtained $5.6 million in new contracts set aside on the JWOD procurement list. National Industries for the Blind [NIB] obtained $14.5 million in new contracts that same year. The figures for 1982 are: NISH—$8.1 million in new contracts; NIB—$7.3 million. For 1983: NISH—$12.5 million; NIB—$8.5 million.

Mr. MRAZEK. We are only talking about the set-asides with this legislation.

Workshop participation would be further limited by the $100 million cap in H.R. 3866. If workshops were to utilize this program to the absolute maximum, participation would still amount to a small fraction of 1 percent of all Government contracts awarded to small businesses. Clearly, the impact of this legislation on the small business community is almost negligible.

This is not to say that every for-profit small business firm will be happy about the small impact workshop participation will have, especially if they are the next lowest bidder and a competing workshop wins. But the same situation exists when a contract is lost to a particular firm that is bidding against other small business firms. Somebody has to lose, and that somebody is not going to like it. The question is: Was the contract won in a fair fight? I believe that question has been answered as far as workshops are concerned. If anything, the workshop participates in the bidding contest with one hand tied behind its back.

I find it difficult to believe that the people who represent companies opposed to this legislation could be so greedy as to oppose setting aside the crumbs at the foot of the table when so many billions of dollars are available for these contracts for small businesses. It is evident that they lack perspective on what it means to be severely disabled in this society.

We call ourselves a Judeo-Christian nation. In defense of those Judeo-Christian values, we are going to spend $300 billion this year to defend ourselves against incredible threats that the Nation is facing. Yet to me a Judeo-Christian nation means a commitment to encouraging and permitting all individuals, including the handicapped to reach their full potential in this society. If you have a handicapped child, or there is a handicapped or disabled person in your family, then you know and understand the impact that this has on a family, and what it means to try to be patient enough to offer the love and understanding that is necessary. For people who have this perspective, allowing workshops to participate in the set-aside program seems such a small price to pay for helping people to reach their fullest potential.

In summation, Mr. Chairman, small businesses and workshops for the handicapped represent two special groups which previous Congresses have considered worthy of special treatment. I believe, along with the 57 cosponsors of H.R. 3866, that the Federal procurement market is so vast that it leaves plenty of room for the participation of both of these groups. In the case of workshops, we are asking for only a tiny slice of the Federal procurement pie that has been set aside for small businesses.

Through employment in workshops, many individuals with severe disabilities have learned work skills and life skills that have permitted them to lead more independent lives. Many have left in-

stitutions because employment in workshops was available to them. The employment offered by workshops provides salary structures which, in many cases, reduces the need to pay supplemental security income and other Federal benefits to individuals with severe disabilities. Under the present climate of fiscal austerity, vocational rehabilitation programs are in danger of being reduced. Enhancing the contracting opportunities of workshops and thus creating new jobs for people with severe disabilities is one means that Congress has of providing a social benefit without the cost of social programs. I can think of no segment of our society that is more deserving or more in need of our help than the severely disabled.

Mr. Chairman, with all respect I would simply ask that upon hearing all of the testimony today, that this legislation, perhaps not at the levels I am talking about, perhaps with the kind of changes necessary any time one deals with the legislative process, but that legislation like this, which can provide hope to thousands of Americans who presently are without hope, be given a chance to be passed by the House of Representatives.

Mr. Chairman, I thank you again for this opportunity to testify before your committee. I will be glad to answer any questions you and the members of the committee may have.

Thank you, Mr. Chairman.

Mr. MITCHELL. Thank you.

I don't think anyone in this room could not fail to be moved by the eloquence of your testimony and by the intense sincerity that you have about this issue.

I have no questions.

Thank you for your testimony.

Mr. MRAZEK. Thank you very much.

Mr. MITCHELL. Our next witness this morning is Ms. Monika Edwards Harrison, the Associate Administrator for Procurement Assistance at the U.S. Small Business Administration.

Thank you for being here this morning. We have a copy of your testimony. If you would simply summarize, giving us the high points of your testimony, I would appreciate it.

TESTIMONY OF MONIKA EDWARDS HARRISON, ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE, SMALL BUSINESS ADMINISTRATION

Ms. HARRISON. Good morning, Mr. Chairman. I am happy to have the opportunity to represent the SBA before you this morning, and I will summarize the most important parts of our statement.

As you can tell from our statement, we are not opposed to the concepts included in H.R. 3866. However, we have a number of concerns which would relate to the implementation of that particular piece of legislation.

We have some suggestions. I know those have been conveyed to you. We think, for example, that the current ceiling of $100 million proposed in this piece of legislation is perhaps too high. We think that $50 million would probably be sufficient to ensure the kind of business that the Representative has just spoken about, and we are

concerned that the $100 million might be seen by the small business community as a threat to them.

We also have a concern about generating data to know when we have reached a ceiling, and that is whether it is $100 million or $50 million. If that ceiling is to be a point at which something happens, we must have the data which would tell that we have reached that point.

We think that the current monitoring mechanisms or lack thereof would not allow agency procurement people or SBA to know when that threshold has been reached, so we ask that there be opportunities for collection of data which would allow us to address the issue of a ceiling on this particular piece of legislation.

We are particularly concerned about the requirement to alleviate economic injury likely to be sustained if a portion of the small business set-aside goes to sheltered workshops and it would be our interpretation that the authorization to"require action appropriate to alleviate the economic injury likely to be sustained" is broader than cases of individual firms and contracts, and in fact includes the entire program as well as given product or service areas.

We believe that specific language from the Congress authorizing such an implementation would be helpful to us, and obviously if that authorization were given to us, we would follow the normal rulemaking procedures including public comment on that.

We also ask that there be given corresponding authority to SBA to require the provision of information on a timely basis, which we would need in order to monitor and evaluate the program, which is also a requirement of H.R. 3866.

In talking about the determination of a severe economic injury, we are asking that the Administrator of SBA be given the authority to make those findings. We would consult with the executive director of the committee for the—the committee which currently works on Javits-Wagner-O'Day and sets this aside. We would ask that the ultimate authority for making those findings be within the Administrator of SBA rather than someplace else.

We are concerned that the legislation does not require the sheltered workshops to meet the precise standards which are currently required to be met by small businesses participating in a set-aside program.

We are aware that some of the sheltered workshops currently exceed those size standards within a number of areas, and believe that that would create problems if they were in effect competing for small business set-asides and were not small businesses in the same way we define other for-profit businesses.

SBA would be willing to consider the unique characteristics of sheltered workshops if it were found upon further examination that the size standards which we currently have for manufacturing or for services would not be appropriate, but we would like to start with the position that those sheltered workshops should meet those size standards.

The last thing that we would like to ask is that we have the opportunity through reports to the Congress, and I know this is included in the bill, to actually evaluate this program. We know it has been a trial program before, and we know this would move it from a trial basis to permanent authority, but we have not had suf-

ficient authority in the past to know what its effect might be, and we ask that the information gathered be looked at carefully and that we have the opportunity to share that information with the Congress in order to make recommendations on it.

That concludes my summary. Thank you very much.

[Ms. Harrison's prepared statement follows:]

PREPARED STATEMENT OF MONIKA EDWARDS HARRISON, ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE, U.S. SMALL BUSINESS ADMINISTRATION

Mr. Chairman and members of the subcommittee: I am Monika Edwards Harrison and I am the Associate Administrator for Procurement Assistance. I appreciate the opportunity to testify today on H.R. 3866, a bill which would authorize not-for-profit organizations operated in the interest of handicapped individuals to receive procurement grants and contract awards set-aside for small business.

The Small Business Administration [SBA] is not opposed to the basic purpose of this bill. We support efforts to increase employment opportunities for the handicapped. We do, however, have some suggestions for limitations to this legislation which would help to insure that parts of the small business community do not sustain harsh impacts from the enactment of this proposal.

First, regarding the proposed ceiling of $100 million, we suggest that a figure of $50 million would allow ample room for growth in this market while providing some assurance to small firms that competition would be controlled. Regardless of the ceiling value, the present data collection system in Federal procurement is not sufficiently timely to permit monitoring of awards on a meaningful basis. It would, frankly, be well past the end of a fiscal year before anyone could be aware that a ceiling had been breached.

The sheltered workshops may attempt to expand that targeted involvement rather than look to entirely different product lines. In order to assure that small suppliers are not totally eliminated from individual areas of contracting, it would be SBA's interpretation that the authorization to require action "appropriate to alleviate the economic injury likely to be sustained" is broader than cases of individual firms and contracts; and, in fact, includes the entire program as well as given product or service areas. Specific language authorizing such an implementation would be helpful. Naturally, such implementation would follow the usual public, rule-making process.

As mentioned, the existing reporting system does not provide information timely for the controls the bill intends. The requirement for SBA to monitor participation, therefore, is not a safeguard unless there is given corresponding authority to require the provision of information, on a timely basis, as is necessary to "monitor and evaluate" the program.

As a separate matter, the authority of SBA to require actions should be grounded in a power to make decisions. SBA has a record of cooperation with the committee for the purchase from the blind and severely handicapped and looks forward to continuing that pattern. Just as the committee makes the final decision on its "procurement list," however, SBA should be authorized to make decisions on the set-aside program, after careful consultation with the committee. We recommend, therefore, that the authorization to make findings of "severe economic injury" and to determine the necessary alleviating actions be vested in the Administrator of SBA after consultation with the executive director of the committee.

We are also concerned that the present section 15(c) reauthorization bill could undermine the limited competitive protections presently found in the Javits-Wagner-O'Day Program. When considering a request to place an item on its procurement list, the committee for purchase from the blind and severely handicapped [the committee] is required to evaluate the ability of the sheltered workshop to perform the work, and seeks to determine whether the incumbent, for-profit contractor would experience a serious adverse impact. It does so by comparing the value of the affected business' present contract for the item with the estimated value of its annual sales.

If, however, a sheltered workshop develops its industrial capacity to produce the item by successfully bidding for a section 15(c) small business set-aside contract, and later applies to the committee to have that item added to the procurement list, the likelihood of approval would increase. The committee would be unlikely to find any potential adverse impact under its present procedures since the incumbent contractor would be the sheltered workshop.

Our final concern is permitting nonprofit sheltered workshops to bid on small business set-aside procurements without also requiring them to otherwise qualify as small businesses, notwithstanding their nonprofit status. The inclusion of all sheltered workshops regardless of size, is unfair to those bona fide for-profit small businesses who are the intended beneficiaries of the programs of the Small Business Administration. Generally, in the manufacturing industries, the small business size standards define a small business as one having 500 or fewer employees, and in the service industries the small business size standards are linked to the firm's average annual gross receipts. These small business size standards are designed to ensure that procurements under the Small Business Set-Aside Program are in fact limited to the small business sectors of the affected industries.

A number of sheltered workshops, however, exceed the levels set by the size standards, and this may well give them economies of scale which would provide the larger workshops with a competitive advantage. The size advantage would be in addition to those they may already enjoy by virtue of being tax exempt, the beneficiaries of Labor Department certificates permitting payment of less than minimum wages, or the recipients of more direct public assistance. Although comprehensive statistics on the size distribution of sheltered workshops are not available, it is clear that some of the larger workshops employ in excess of 500 persons. In order to preserve the intregity of the Small Business Set-Aside Program and the competitive protections embodied in the small business size standards, we suggest that sheltered workshops bidding under a reauthorized section 15(c) be required to comply with the same basic rules as so for-profit small businesses—that is, that they otherwise qualify as small businesses under the applicable size standards.

We believe that the present size standards are appropriate for this purpose. However, if it becomes necessary, the size standards office of the Small Business Administration can revise the regulations governing the computation of "number of employees" and "annual receipts" to take into consideration some of the unique characteristics of nonprofit sheltered workshops.

In summary, we seek to avoid disproportionate adverse impact on small business, the intended beneficiary of the Set-Aside Program, while allowing for new opportunity for the handicapped. We believe the suggestions we have made would help to achieve a sound balance in this program.

This concludes my statement, Mr. Chairman. I will be pleased to answer any questions you may have.

Mr. MITCHELL. The administration has spent a great deal of time thinking on this issue. You want to look at the results of the program that just ended, study and evaluate that?

Ms. HARRISON. If this program is enacted into law, we want to be able to have the authority to collect new data and to be able to on a periodic basis, to review our findings with you.

We don't know at this point whether there would be a disparate impact on small businesses but, if during the time we collect data we see evidence of that, we would like the opportunity to share that with you and to look at the further development of that program.

Mr. MITCHELL. Wouldn't it be beneficial for you to study the results of the pilot program?

Ms. HARRISON. It would be, although it is my understanding that there was not a lot of data generated on that program so we are starting from less than a particularly good base.

Mr. MITCHELL. How many workshops would be eligible to compete for set-asides if this legislation is passed?

Ms. HARRISON. I don't know the answer to that.

Representative Mrazek talked about 5,000 workshops. Given our criteria relating to their size and having that as a requirement for participation, we don't know how many of those would meet the current size standards in particular areas where they would compete.

Mr. MITCHELL. From 1978 to 1983, can you tell me how many contracts were awarded to workshops under the Set-Aside Program?

Ms. HARRISON. I can only tell you what was reported to you on December 18, 1981, and that was a report from Mr. McDermott, then the Associate Administrator. He reports that four Federal agencies responded to the Small Business Administration's request of April 9, 1981, and reported a total dollar value of $723,900. As best I am aware, this is the only report sent to the Congress.

Mr. MITCHELL. Then you have no knowledge about 1982 and 1983?

Ms. HARRISON. That is correct.

Mr. MITCHELL. Have you attempted to get information on that?

Ms. HARRISON. Not that I am aware of. I believe there was no reporting mechanism in place. Obviously, I was not here, but I am not aware that there were any other data generated.

Mr. MITCHELL. Let's look at that same time period, 1978 to 1983. How many of the contracts won by the workshops were then converted to the Javits-Wagner-O'Day Program?

Ms. HARRISON. Again, my understanding is that not very many of those were. First of all, not many of the sheltered workshops were competing under the Small Business Set-Aside Program. That limited number with contracts valued at $723,000 were not frequently converted.

Again, it is skeletal information. We have no statistics.

Mr. MITCHELL. I must confess I have problems with less than a minimum wage. They are not insoluble problems, but I have them.

The workshops do enjoy exemption from the Federal minimum wage law. Do you think these exemptions are warranted or justified if the workshops are allowed to compete under the Set-Aside Program?

Ms. HARRISON. I can only give you my own personal views. In listening to Representative Mrazek, I think we have come to a philosophical question of if these individuals were not paid less than the minimum wage whether they would be given any employment opportunities at all.

Not knowing the answer to that, my personal view would be that in light of the increased costs which were mentioned this morning to the not-for-profit firms which conduct these sheltered workshops, that it may be appropriate to leave them as they are.

Mr. MITCHELL. To leave them exempted from the Federal minimum wage?

Ms. HARRISON. Again, that is my personal view, and doesn't represent cleared administration policy. It is a difficult philosophical question for us to respond to.

If they had to pay the minimum wage, would they be in existence? We don't know.

Mr. MITCHELL. I know the SBA takes a very hard position on those benefiting from subcontracting under a set-aside contract.

What is your opinion on this insofar as the workshops are concerned? If they are competing for set-asides, should they be allowed to subcontract out any amount of the award they want?

Ms. HARRISON. I understand they are talking about having a minimum of 75 percent of the work being performed by handi-

capped individuals within the workshops, and I assume that would preclude anything over 25 percent being contracted out.

Mr. MITCHELL. When you say they, who is they?

Ms. HARRISON. The legislation. The Senate version has in it a 75-percent-labor-within-the-workshop requirement.

My understanding is that that was in the previous program as well.

Mr. MITCHELL. I don't think you are quite right. It is my understanding that under the Senate bill 75 percent of the total labor must be performed.

Ms. HARRISON. Right.

Mr. MITCHELL. That is a little different, I think, from 75 percent of each individual contract.

Ms. HARRISON. You mean contracting out the manufacturer of goods or the services themselves.

Mr. MITCHELL. Yes; you have to look at the totality of the thing.

Ms. HARRISON. Then, obviously, we would not want a significant portion of those awards to be subcontracted out, no. That would defeat the purpose of giving the sheltered workshop the opportunity to participate in the first place.

Mr. MITCHELL. You are saying there ought to be some kind of limitation?

Ms. HARRISON. I would think so.

Mr. MITCHELL. What percentage limitation?

Ms. HARRISON. I don't know. I think we would have to look at data to get a better feel for that.

Mr. MITCHELL. One last question. In your testimony you indicated that you would like to see a change in the bill where SBA would solely determine what constitutes severe economic injury.

Ms. HARRISON. We would ask that it be done in consultation with the committee.

Mr. MITCHELL. My question is, How do you define that term, severe economic injury?

Ms. HARRISON. My understanding is that, the way it has been defined before is that if a small business currently has a contract which is then awarded to a sheltered workshop, thereby taking the business away from the other small business, we would look at the amount of the contract that had been taken away as compared to the total receipts of that small business and make some determination as to the percentage of the business that was lost.

If you look at that across industries where there were large numbers of sheltered workshops participating or if it was a small industry business which through the small business set-asides got a large number of contracts which would be taken over by the workshop, that is how you would define severe economic injury.

We could look at it as injury to a firm or to an industry, but we would have to look at the specifics, and I believe that we should look at the data generated from a new program rather than trying to go back and reconstruct pretty much nonexistent data from the past.

Mr. MITCHELL. I can foresee enormous difficulties on this. I am not talking about an industrywide loss. I am talking about if a small business claims to lose a certain percentage of its sales, and

the problem is, how are you going to define what that percentage would be? Is it 10 percent, 20 percent, or 50 percent?

Ms. HARRISON. Again, we would have to develop criteria. The criteria has to be developed to the extent that we can do that through economic analysis of the industry, and then the potential for contracts within a particular area for certain small businesses.

I don't think any of us have any ideas at this point as to whether 50 or 10 percent is the right number, and I am not aware that judgments were made on the past legislation as to what severe economic injury meant. I don't think anyone has any fixed idea of what is right today.

We need to consult with businesses and industry.

Mr. MITCHELL. Might I suggest that you look at the data as expeditiously as possible, because I would be very reluctant to press ahead with this legislation unless there is a hard, tight definition of what constitutes severe economic injury.

Unless you have got that locked into place, I can foresee all kinds of difficulties coming from the for-profit organizations.

So how quickly do you think you might have a thoroughly definitized version of what constitutes severe economic injury?

Ms. HARRISON. Do you mean at a preliminary stage or having gone through rulemaking.

Mr. MITCHELL. A preliminary stage at least.

Ms. HARRISON. I would say we could do that within a couple of months. At the outset, it would require very detailed review at SBA. We would want to consult with other agencies, with the committee, with your own committee, but I would say a couple of months would probably be——

Mr. MITCHELL. I would hope that we could speed it up even more than that. The harsh reality is that our legislative session ends early this year, and we have few legislative days in which to act. And I think this is so critical it would be foolish to act without it being accomplished.

Ms. HARRISON. That is one of the areas that we have a concern about in implementing this legislation. We are not opposed to the concept, but we recognize it is not something that can be enacted one day and implemented smoothly the next.

Mr. MITCHELL. You know the awful struggle we have had on size standards with your agency, and it took months to get anyone to even begin to address that problem.

Do you have any questions?

Mrs. MEYERS. No questions, Mr. Chairman.

Mr. MITCHELL. Thank you very much.

Ms. HARRISON. Thank you.

Mr. MITCHELL. Again, I would like to advise the witnesses that since we have had an opportunity to examine your testimony, we would really appreciate it if you would summarize, capsulize, just give us the salient points.

Our first panel consists of Work, Inc., Dr. William Wolk, the executive director; Goodwill Industries of Western Connecticut and the National Association of Rehabilitation Facilities, Norman Barres; and the Human Resources Center out of Albertson, NY, Dr. Edwin W. Martin, the president and chief executive.

Gentlemen, thank you very much for taking time out of your schedules to be here. Unless there is some severe difficulty, I would ask that the panelists present your statements in the same order in which you were called.

TESTIMONY OF WILLIAM P. WOLK, EXECUTIVE DIRECTOR, WORK, INC.

Dr. WOLK. Thank you, Mr. Chairman.

I am Bill Wolk, executive director of Work, Inc., in Quincy, MA. I think you may have me confused with Mr. Barres from western Connecticut in your introduction.

I am also the vice chairman of the board of directors of the National Industry for the Severely Handicapped, and appreciate the opportunity to be here today to voice my support for H.R. 3866.

Certainly based on the questions you just asked, I know that there are many technical areas of this legislation that need to be analyzed in depth and the National Industries for the Severely Handicapped will be submitting written testimony on these issues separately which will go into more detail. I support their statement.

Today I want to confine my remarks to discussion of the area I know best, which is training people with very severe disabilities to be productive workers. For the past 25 years, I have devoted my professional life to working with people who are very severely disabled. I feel it is my responsibility to try to represent those people today because they cannot speak for themselves.

My agency is located outside of Boston and we work daily with 350 to 400 persons with severe disabilities who are served by a staff of 125. While we work to help these people in many areas, we have found that their most critical need is employment.

We all need work to provide meaning and structure to our lives, but these people need it desperately. We have tried many ways to prepare these people for work and to deal with their other social and living problems for the past 20 years, and what we have found is that nothing is as effective as real work itself is.

Real work provides the opportunity not only for the benefits that come with work directly, but we have found that real work helps people to overcome other problems. For example, their social skills improve. Many of our severely disabled workers exhibit interfering behaviors such as tantruming and rocking, and we find that when they are able to be meaningfully involved in real work that these other symptoms are greatly reduced. They become productive and a whole new sense of dignity and pride comes as a result of that.

The distillation of my years of experience in this field is that work is by far the most powerful of all the therapies that we have ever used.

Now, since these persons with very severe disabilities can't be here to speak for themselves, I have brought with me a very brief film clip, only 2 minutes long. The main person you are going to see is a 30-year-old woman, Mary Ann McDonald. She has been with us at Work, Inc., and CP&S, an affiliated organization, for 8 years. She is autistic and severely retarded.

When she came to us she was unable to concentrate on work at all. In fact, she caused a lot of problems for other people. She would tantrum, throw things around, be self-abusive, hurt other people and although she had many years of therapy her progress has been very slow and painful and wasn't preparing her that effectively for the community.

In the film you are going to see her working and notice her mannered movements, which are characteristics of autism. But you will be able to observe her job confidence and pride in her performance and hear her father's comments on her progress.

In the film she is working on a machine involved in manufacturing a urinary leg bag being produced for the Veterans' Administration hospitals under a contract originally obtained through the SBA Set-aside Program when we were eligible prior to 1983.

Would you object if we lowered the lights a little bit so you could see this more clearly?

Mr. MITCHELL. If I did object, you wouldn't let me.

Would someone get the lights, please?

[Film shown.]

Dr. WOLK. I think that was within the 2 minutes. I just wanted to show you the product that she is working on, a urinary collection bag. This is the finished product which is strapped on to the leg and collects urine for ambulatory patients. You can see how that small business set-aside contract has helped to change Mary Ann's life.

You heard her father's statement, and I think you can sense his relief from a constant worry that his daughter would have to be institutionalized after his death. Because of the progress she made through work, Mary Ann's behavior improved and she was subsequently accepted for placement in a group home.

I want to say that it is important for you to realize that this bill, Mr. Chairman, is not just a piece of procurement legislation for us. It is a vital link in making real job opportunities possible for people who are not presently employable in the competitive work force.

Our clients are severely disabled, retarded, mentally ill, autistic and so forth. These people have historically been felt to be a burden on society, and they have often been locked away in institutions. I think as Congressman Mrazek said earlier, they, certainly, are among America's most disenfranchized citizens.

Congress has played a vital role in releasing them from institutions and now we have to help them become a part of society. They have a right to participate in their community as we do. They must be able to work and participate in the community as full citizens, but few kinds of work are suitable for these people.

We have to consider a number of factors in selecting their work, physical danger, lack of ability to communicate, read and write, and so on.

Allowing workshops to participate in the Small Business Set-Aside Program has made the difference in the past, and will in the future. For example, in our workshop, prior to 1983, we had contracts, SBA contracts which provided 32 jobs for people with severe disabilities, a variety of jobs, grounds-keeping, janitorial, packaging, and so forth.

Since we lost our eligibility, and we have kept track of this, there have been a number of contracts that we know our people could have done. If we had obtained those contracts, there would be 30 people working that are not working because we were unable to get them.

While there is work available from the commercial sector, this work comes and goes quickly. You can see in a case like Mary Ann's that it takes years to train her, maybe 2 or 3 years. So if we have the contract for just, say, a year, she barely gets trained and then it is gone. Then we have to get another one and we are not going to get anywhere with her.

So for people like her, the Government contracts, when they can be transferred and set aside under Javits-Wagner-O'Day, make it possible for these people to be productive workers. I know that is a sensitive area, but for the people that I represent, they don't have the flexibility to permit rapid retraining and I think it would be unfair to Mary Ann to take away her job just after she had mastered it.

A few years ago there were few options for our people. Most of them were locked up. The passage of Public Law 94–142, the Rehabilitation Act of 1973, the Javits-Wagner-O'Day Act, and the now lapsed SBA Eligibility Program, these acts show the Federal Government's commitment to improving the quality of life for these severely disabled citizens.

Tremendous strides have been made since these laws were enacted, but people with severe disabilities still need the help of the Federal Government. They need the opportunity to be gainfully employed. They can't be here today to articulate their needs and concerns or tell you personally what their jobs mean to them.

I can only say on their behalf that they need, want, and deserve the opportunity to be meaningfully employed. H.R. 3866 will help create that opportunity.

Thank you.

[Dr. Wolk's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM P. WOLK, EXECUTIVE DIRECTOR, WORK, INC.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM BILL WOLK, EXECUTIVE DIRECTOR OF WORK, INC., IN QUINCY, MASSACHUSETTS. I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY TO VOICE MY SUPPORT FOR H.R. 3866, AN AMENDMENT TO THE SMALL BUSINESS ACT, WHICH WOULD REINSTATE SHELTERED WORKSHOP ELIGIBILITY TO BID ON SMALL BUSINESS SET ASIDES. I KNOW THERE ARE MANY TECHNICAL AREAS OF THIS LEGISLATION WHICH NEED TO BE ANALYZED IN DEPTH, AND I'M AWARE THAT THE NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED, AN ORGANIZATION WHICH I SERVE AS VICE CHAIRMAN OF THE BOARD OF DIRECTORS, WILL BE SUBMITTING WRITTEN TESTIMONY ON THESE ISSUES. I SUPPORT NISH'S TESTIMONY COMPLETELY, BUT I WANT TO CONFINE MY REMARKS TODAY TO A DISCUSSION OF THE AREA I KNOW BEST--TRAINING PEOPLE WITH VERY SEVERE DISABILITIES TO BE PRODUCTIVE WORKERS.

FOR THE PAST 25 YEARS, I HAVE DEVOTED MY PROFESSIONAL LIFE TO WORKING WITH PEOPLE WHO ARE VERY SEVERELY DISABLED. I HAVE HELD A NUMBER OF POSITIONS IN THE MENTAL HEALTH AND REHABILITATION FIELDS, INCLUDING CLINICAL PSYCHOLOGIST, PSYCHOTHERAPIST, AND COLLEGE INSTRUCTOR. I HAVE SPECIALIZED IN THE PSYCHOLOGY OF WORK. IN MY CURRENT CAPACITY AS EXECUTIVE DIRECTOR OF WORK, INC., I AM THE ADMINISTRATOR OF A REHABILITATION CENTER LOCATED JUST OUTSIDE

OF BOSTON WHICH SERVES ADOLESCENTS AND ADULTS WITH SEVERE MENTAL AND PHYSICAL DISABILITIES. WORK, INC. HAS A CLIENT POPULATION OF 350 AND A STAFF OF 125. OUR PROGRAM COMPONENTS INCLUDE: VOCATIONAL-SOCIAL EVALUATION; WORK COUNSELING AND TRAINING; EXTENDED SHELTERED EMPLOYMENT; JOB PLACEMENT; AND GROUP HOME AND COOPERATIVE APARTMENT RESIDENTIAL PROGRAMS. IN ADDITION, WE RUN COOPERATIVE SATELLITE WORK PROGRAMS FOR 700 STUDENTS WITH SPECIAL NEEDS IN 40 PUBLIC SCHOOLS TO FACILITATE THEIR TRANSITION TO ADULT LIFE. OUR PROGRAM IS COMPREHENSIVE BECAUSE THE NEEDS OF PEOPLE WITH SEVERE DISABILITIES ARE COMPREHENSIVE. IT IS NOT ENOUGH TO PROVIDE A SINGLE SERVICE TO THE PEOPLE WE WORK WITH EVERY DAY. THEY NEED SUPPORT IN MOST ASPECTS OF THEIR LIVES.

ONE OF THEIR MOST CRITICAL NEEDS IS WORK. ALL OF US NEED WORK TO PROVIDE MEANING AND STRUCTURE TO OUR LIVES, BUT THESE PEOPLE NEED IT DESPERATELY. FOR THE PAST 20 YEARS, WE HAVE TRIED NUMEROUS APPROACHES TO EFFECT DESIRABLE CHANGES IN THEIR LIVES--COUNSELING, TEACHING WORK PREPARATORY ACTIVITIES, AND A VARIETY OF OTHER TRAINING TECHNIQUES. MANY OF THESE HAVE BEEN SUCCESSFUL IN HELPING PEOPLE TO FUNCTION MORE EFFECTIVELY, BUT THEY FELL SHORT OF OUR GOAL OF CREATING OPPORTUNITIES FOR MEANINGFUL EMPLOYMENT. FOR A WHILE WE TRIED SIMULATED WORK, THINKING WE COULD DO MORE TO GUARANTEE FUTURE EMPLOYMENT OPPORTUNITY. AGAIN, WE HAD ONLY LIMITED SUCCESS. WHAT WE FINALLY DISCOVERED WAS THAT NOTHING WE COULD SIMULATE HAD AS MUCH VALUE AS ACTUALLY DOING <u>REAL WORK</u> IN A <u>REAL JOB</u>. WHATEVER IT IS -- THE SETTING -- THE REWARD OF A PAYCHECK -- THE MOTIVATION TO DO AS GOOD A JOB AS A CO-WORKER -- WHATEVER, -- NOTHING ELSE, <u>NOTHING</u> WORKS LIKE WORK. IT IS QUITE SURPRISING HOW PEOPLE WHO ARE SEVERELY RETARDED CAN DISTINGUISH

BETWEEN MAKE WORK AND REAL WORK. NOT ONLY DO THEIR JOB AND SOCIAL SKILLS IMPROVE WHEN THEY ARE GIVEN REAL WORK TO DO, BUT INTERFERING BEHAVIORS SUCH AS ROCKING AND TANTRUMING ARE GREATLY REDUCED. THEY BECOME PRODUCTIVE HUMAN BEINGS, AND WITH THAT ACCOMPLISHMENT COMES A WHOLE NEW PERSON WHOSE DIGNITY, PRIDE, AND SENSE OF SELF-WORTH ARE CLEARLY EVIDENT.

I'VE BROUGHT WITH ME THIS MORNING A VERY BRIEF FILM CLIP ABOUT ONE OF THE EMPLOYEES WHO WORKS AT CONSOLIDATED PRODUCTS AND SERVICES, A NONPROFIT AFFILIATE OF WORK, INC., WHICH MANUFACTURES DISPOSABLE MEDICAL PRODUCTS FOR HOSPITALS. THE WOMAN YOU WILL SEE IS 30-YEAR-OLD MARY ANN MCDONALD. SHE HAS BEEN WITH US AT WORK, INC. AND CP & S FOR EIGHT YEARS. MARY ANN IS AUTISTIC AND SEVERELY RETARDED. WHEN SHE CAME TO US SHE WAS NOT ABLE TO CONCENTRATE ON WORKING AT ALL. NOT ONLY WAS SHE UNABLE TO WORK HERSELF, SHE FREQUENTLY CAUSED PROBLEMS FOR OTHER PEOPLE. AFTER VERY SHORT PERIODS OF TIME SHE WOULD HAVE A TANTRUM AND THROW THINGS AROUND. DURING THESE TANTRUMS SHE ABUSED HERSELF AND HURT OTHER PEOPLE. ALTHOUGH SHE'D HAD MANY YEARS OF REHABILITATION THERAPY, HER PROGRESS HAD BEEN SLOW AND PAINFUL, AND HAD NOT PREPARED HER FOR COMMUNITY WORK AT ALL. IN THE FILM YOU MAY NOTICE HER MANNERED MOVEMENTS WHICH ARE CHARACTERISTIC OF AUTISM. BUT YOU'LL ALSO BE ABLE TO OBSERVE HER JOB COMPETENCE, HER PRIDE IN HER PERFORMANCE, AND HEAR HER FATHER'S COMMENTS ON HER PROGRESS. SHE IS WORKING ON A URINARY LEG BAG BEING PRODUCED FOR THE VETERANS ADMINISTRATION UNDER A CONTRACT ORIGINALLY OBTAINED THROUGH THE SMALL BUSINESS ADMINISTRATION'S SET-ASIDE PROGRAM.

-FILM-

YOU CAN SEE HOW THAT SMALL BUSINESS SET-ASIDE CONTRACT HAS HELPED TO CHANGE MARY ANN'S LIFE. YOU HEARD HER FATHER'S MOVING STATEMENT, AND COULD SEE HIS VISIBLE RELIEF FROM THE CONSTANT WORRY THAT HIS DAUGHTER WOULD HAVE TO BE INSTITUTIONALIZED AFTER HIS DEATH. BECAUSE OF THE PROGRESS SHE MADE THROUGH WORK, MARY ANN'S BEHAVIOR IMPROVED AND SHE WAS SUBSEQUENTLY ACCEPTED FOR PLACEMENT IN A GROUP HOME. IN THE FILM YOU ALSO HEARD AND SAW SOME OF THE OTHER WORKERS WHO ARE BENEFITTING FROM FEDERAL CONTRACTS. I THINK YOU PROBABLY ARE AWARE THAT NEITHER MARY ANN, NOR THE OTHER PEOPLE IN THE FILM WOULD BE THE FIRST PEOPLE HIRED TO WORK IN A "NORMAL" COMPETITIVE ENVIRONMENT. IN FACT IF CP & S DIDN'T EXIST, THERE WOULDN'T BE ANY VOCATIONAL PROGRAMS AVAILABLE TO HELP THEM CAPITALIZE ON WHAT THEY'VE LEARNED THROUGH REHABILITAION. IN SHORT, THEY COULDN'T CONTINUE TO PROGRESS IN DEVELOPING THEIR SKILLS. BUT THESE PEOPLE DO DESERVE TO WORK AND EARN THEIR OWN MONEY. THEY MIGHT NOT BE ABLE TO ARTICULATE THEIR THOUGHTS AND EMOTIONS AS WELL AS WE CAN, BUT THEY MANAGE TO TELL US THAT THEY VALUE THEIR JOBS, AND ARE PROUD OF THEIR WORK. THEY ALSO MAKE IT VERY CLEAR THAT THEY UNDERSTAND AS WELL AS WE DO THE RELATIONSHIP BETWEEN THEIR PRODUCTIVITY AND THEIR PAY.

I THINK IT'S IMPORTANT FOR YOU TO REALIZE THAT THIS BILL IS NOT JUST A PIECE OF PROCUREMENT LEGISLATION FOR US--BUT A VITAL LINK IN MAKING REAL JOB OPPORTUNITIES POSSIBLE FOR PEOPLE WHO ARE NOT PRESENTLY EMPLOYABLE IN THE COMPETITIVE WORKFORCE. FEW PEOPLE KNOW ABOUT THE CLIENTS THAT WORKSHOPS SERVE. LET ME TELL YOU ABOUT THEM.

OUR CLIENTS AREN'T JUST DISABLED. MOST OF THEM ARE <u>SEVERELY</u> DISABLED. THEIR DISABILITIES ARE SO SERIOUS THAT THEY

CANNOT FIND WORK IN THE COMPETITIVE MARKETPLACE. THEY MAY BE SEVERELY MENTALLY RETARDED, CHRONICALLY MENTALLY ILL, AUTISTIC, AND SIGHT AND HEARING IMPAIRED. MANY SUFFER FROM SEIZURES, CEREBRAL PALSY, OR COMBINATIONS OF THE FOREGOING. HISTORICALLY, THEY WERE FELT TO BE SUCH A BURDEN ON SOCIETY THAT MOST WERE LOCKED AWAY IN INSTITUTIONS FOR YEARS. IN FACT, THEY HAVE BEEN AMONG AMERICA'S MOST DISENFRANCHISED CITIZENS.

CONGRESS HAS PLAYED A VITAL ROLE IN RELEASING THEM FROM THOSE INSTITUTIONS. NOW THEY MUST HAVE HELP IN BECOMING PART OF OUR SOCIETY. IF THAT IS NOT POSSIBLE, THEN DEINSTITUTIONALIZATION IS JUST A MEAN TRICK. OUR CLIENTS HAVE A RIGHT TO PARTICIPATE IN THE COMMUNITY JUST AS WE DO. LIKE US, THEY MUST BE ABLE TO <u>WORK</u> TO BE FULL PARTICIPANTS IN COMMUNITY LIFE. BUT RELATIVELY FEW KINDS OF WORK ARE SUITABLE FOR PEOPLE WITH SEVERE DISABILITIES. WE HAVE TO CONSIDER A NUMBER OF FACTORS IN DETERMINING THE JOBS OUR WORKERS CAN PERFORM -- PHYSICAL DANGER, UNDUE MENTAL STRAIN, THE NEED FOR VERBAL COMMUNICATION OR READING SKILLS, GEOGRAPHIC LOCATION, ACCESSIBILITY, AND TRANSPORTATION MUST BE CONSIDERED AND JUDGED TO BE APPROPRIATE FOR PEOPLE WITH SEVERE DISABILITIES. THE WORK MUST BE LABOR-INTENSIVE, AND BECAUSE OF TIGHT FISCAL CONSTRAINTS, IT CANNOT REQUIRE LARGE AMOUNTS OF UP-FRONT CAPITAL.

ALLOWING WORKSHOPS TO PARTICIPATE IN THE SMALL BUSINESS SET-ASIDE PROGRAM HAS MADE A DIFFERENCE IN THE PAST AND WILL MAKE A DIFFERENCE IN THE FUTURE. OUR WORKSHOP WON FOUR SMALL BUSINESS SET-ASIDE AWARDS BEFORE OUR ELIGIBILITY LAPSED IN 1983. THESE CONTRACTS PROVIDED 32 JOBS FOR PEOPLE WITH SEVERE DISABILITIES. THE JOBS INCLUDED CLEANING THE FITCHBURG FEDERAL CENTER; GROUNDS-KEEPING FOR AN IRS BUILDING; PACKAGING POCKET COMBS FOR GSA; AND

MANUFACTURING ORDNANCE BAGS FOR THE V.A.. NONE OF THESE JOBS SOUND TERRIBLY GLAMOROUS, BUT FOR PEOPLE WITH SEVERE DISABILITIES THE WORK WAS SIGNIFICANT. IT PROVIDED VOCATIONAL TRAINING AND REHABILITATION OPPORTUNITIES FOR 32 PEOPLE WHO WOULD NOT OTHERWISE HAVE HAD THE BENEFIT OF THIS EXPERIENCE.

CONVERSELY, SINCE WORKSHOP ELIGIBILITY EXPIRED IN 1983, THERE HAVE BEEN AT LEAST FOUR CONTRACTS WE COULD NOT BID ON AND THIRTY JOBS THAT WERE NOT AVAILABLE TO OUR CLIENTS. OUR INABILITY TO COMPETE FOR THESE CONTRACTS WAS PARTICULARLY FRUSTRATING BECAUSE WE KNOW THAT OUR WORKERS COULD PERFORM THE JOBS EFFECTIVELY.

THE COMMERCIAL SECTOR HAS BEEN A GOOD SOURCE FOR SOME CONTRACTS, BUT OUR EXPERIENCE HAS BEEN THAT GOVERNMENT CONTRACTS PROVIDE A MORE CONSISTENT SUPPLY OF ORDERS AND, THEREFORE, BETTER TRAINING OPPORTUNITIES AND MORE STABLE EMPLOYMENT. I KNOW THERE WAS CONSIDERABLE DISCUSSION ABOUT THE PROVISION FOR TRANSFERABILITY WHEN THIS BILL WAS INTRODUCED IN THE SENATE. TESTIMONY TO BE SUBMITTED FOR THE RECORD BY NISH WILL HIGHLIGHT THE MORE TECHNICAL DETAILS OF THE ISSUE, BUT FROM MY PERSPECTIVE AS A WORKSHOP ADMINISTRATOR, I WANT TO LET YOU KNOW WHY WE FEEL SO STRONGLY THAT WE NEED THAT PROVISION. PEOPLE LIKE MARY ANN NEED TO BE ABLE TO KEEP THE SAME JOB FOR LONG PERIODS OF TIME. IT TAKES YEARS TO TRAIN SOMEONE LIKE MARY ANN TO DO A JOB, AND SHE DOESN'T HAVE THE FLEXIBILITY THAT WOULD PERMIT HER TO BE RETRAINED AT SOMETHING DIFFERENT VERY QUICKLY. IT WOULD BE FRUSTRATING AND UNFAIR TO HER TO TAKE A JOB AWAY FROM HER AFTER SHE'D MASTERED IT. I HOPE YOU'LL KEEP THAT VERY HUMAN ASPECT IN MIND AS YOU CONSIDER THIS BILL.

JUST A SHORT TIME AGO THERE WERE FEW OPTIONS AVAILABLE FOR PEOPLE WITH SEVERE DISABILITIES. THEY WERE LOCKED AWAY IN

INSTITUTIONS AND CONSIDERED HOPELESS. WITH THE PASSAGE OF P.L. 94-142, THE REHABILITATION ACT OF 1973, THE JAVITS-WAGNER-O'DAY ACT, AND THE NOW LAPSED SBA ELIGIBILITY PROGRAM, THE FEDERAL GOVERNMENT COMMITTED ITSELF TO IMPROVING THE QUALITY OF LIFE FOR THESE PEOPLE.

TREMENDOUS STRIDES HAVE BEEN MADE SINCE THESE LAWS WERE ENACTED, BUT PEOPLE WITH SEVERE DISABILITIES STILL NEED THE HELP OF THE FEDERAL GOVERNMENT. THEY NEED THE OPPORTUNITY TO BE GAINFULLY EMPLOYED. THEY CAN'T BE HERE TODAY TO ARTICULATE THEIR NEEDS AND CONCERNS OR TELL YOU PERSONALLY WHAT THEIR JOBS MEAN TO THEM. I CAN ONLY SAY ON THEIR BEHALF THAT THEY NEED, WANT, AND DESERVE THE OPPORTUNITY TO BE MEANINGFULLY EMPLOYED. H.R. 3866 WILL HELP CREATE THAT OPPORTUNITY.

THANK YOU.

Mr. MITCHELL. Thank you very much.

I would like to hear from all the panelists, and then ask questions.

Mr. Barres.

TESTIMONY OF NORMAN O. BARRES, PRESIDENT, GOODWILL INDUSTRIES OF WESTERN CONNECTICUT, BRIDGEPORT, CT, ON BEHALF OF NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Mr. BARRES. Thank you, Mr. Chairman.

Mr. Chairman, my name is Norman Barres. I am president of Goodwill Industries of Western Connecticut in Bridgeport. I have been involved in Goodwill for 30 years and I represent the National Association of Rehabilitation Facilities [NARF], a national association which represents community-based rehabilitation facilities. I am here to testify in behalf of H.R. 3866.

As a result of the lapse of previously enacted authority to bid on small business set-aside contracts, rehabilitation facilities have lost and continue to lose the opportunity to train and employ disabled persons. When small business set-aside privileges were available to rehabilitation facilities, they proved to be a valuable source of training and employment opportunities for many severely disabled individuals, opportunities that allowed them to become contributing members of society.

The historical perspective and impact of allowing rehabilitation facilities to bid on small business set-aside contracts to provide goods and services for the Federal Government have demonstrated a very minimal impact to the small business community. During the 3-year eligibility between 1981 and 1983, there was a $100 million annual cap placed on SBA contracts to be awarded to rehabilitation facilities.

Small business set-aside contracts actually awarded to rehabilitation facilities totaled less than $10 million during that 3-year period. During the same time period, 1981 to 1983, small business contracts for the Government totaled $81.7 billion. Small business set-asides totaled $37.5 billion. That amounts to a very insignificant one-fourth of 1 percent of the total Small Business Administration contracts.

Currently there are only 240 rehabilitation facilities serving the severely disabled which are providing services or commodities to the Federal Government under the Javits-Wagner-O'Day Program. The total number of rehabilitation facilities in the United States is estimated to be about 5,000. Of these, it is estimated that less than half would have the capability to bid on the set-aside contracts. This compares to the 14 million small businesses that the Small Business Administration estimates are currently in existence. Rehabilitation facilities can hardly be considered a threat to the small business community.

Many rehabilitation facilities presently have inadequate capital revenue, minimal equipment, and other resources necessary to provide goods and services for the Government. Because of these limitations, the number and the type of Government contracts that rehabilitation facilities could bid on will be limited.

Why then is this legislation and the authority to bid on Government contracts so important to the rehabilitation facility community? For several reasons.

One, it provides an increased opportunity for the severely handicapped and the blind to receive training, employment and job opportunities at wages commensurate with their abilities.

Two, it would allow the rehabilitation facility community access to small Government contracts that are, in many cases, not otherwise available to them.

Three, under the provisions of H.R. 3866, a minimum of 75 percent of the direct labor force on Government contracts must come from disabled individuals. This will allow the rehabilitation facilities to help the Federal Government carry out the already established public policy of providing jobs for persons with those disabilities.

Four, another advantage to the rehabilitation facility community is that there are minimal time constraints associated with small business set-aside contracts. Facilities would be able to identify opportunities and act quickly to get the work to disabled workers. Rehabilitation facilities would not be required to commit their resources beyond the timeframe of a specific contract. They would also be able to enter into the marketplace based on the identified needs of the U.S. Government. This bill will also allow the rehabilitation facility community the opportunity to provide goods and services to the U.S. Government at a fair and reasonable price.

Five, another very important benefit that this bill will provide is the opportunity for people with disabilities to offset their tax-supported payments, such as Social Security and disability income, with earned income. In many cases, disabled persons are able to eliminate their dependency upon State and Federal dollars as a result of earned income through the rehabilitation facility programs. The SBA set-aside contracts would certainly enhance the

continuation and expansion of earned income being available to displace tax-supported payments to disabled persons.

Six, the rehabilitation facility community recognizes that it will not be the successful bidder on every contract. The rehabilitation facilities across the United States must be fiscally responsible and good business managers like any other business enterprise. We cannot bid on any contract in a fiscally irresponsible manner. If we do so, we will go out of business like any other business enterprise. We must operate our facilities according to good business practices. In fact, because we work with severely disabled individuals, we must be even more conscientious of good business practices.

Seven, the contracts that rehabilitation facilities will be able to bid on, especially service contracts, will allow many severely handicapped persons to work at community integrated worksites where disabled persons will be able to work in nonsegregated environments. These disabled persons would not be able to work in such settings without the supportive services provided by the rehabilitation facility.

This concept is known as supported employment and is now a major initiative of the U.S. Department of Education. Jobs made available under the set-aside contracts would be appropriate for this initiative to get persons who were once thought to be too disabled to work at all, to now work at productive jobs, and in many cases in a world that you and I take for granted.

Rehabilitation facilities want to maintain a positive working relationship with the small business community. As a result, H.R. 3866 provides assurance that the small business concerns will be protected.

For example, an annual ceiling of $100 million represents less than 1 percent of the total Small Business Administration set-asides. Small businesses also have the right to appeal if there is a significant adverse impact upon their business. A third safeguard is the 3-year authorization. The program sunsets in 3 years in order that there may be a review of impact.

In summary, H.R. 3866 will allow, once again, the rehabilitation facility community to bid competitively for Government contracts. It is a restoration of eligibility that holds the promise of providing disabled individuals with employment opportunities while providing goods and services for the U.S. Government under the Small Business Set-Aside Program in a competitive manner.

Having the opportunity to bid on Federal contracts provides rehabilitation facilities with the opportunity to enhance and enrich the lives of disabled citizens throughout the United States. You have the support and encouragement of the entire rehabilitation facility community to make this legislation law and to join with the not-for-profit sector and the for-profit sector in making society a better place for everyone.

This is a bill that makes winners out of all participants. The Government will receive products and services at the lowest possible cost, disabled individuals will be provided training and employment opportunities that are wider and more varied than have been available to them in the past, and the small business community will be adequately protected to insure that there is not an adverse impact on their businesses.

Thank you, Mr. Chairman.

Mr. MITCHELL. Thank you very much.

Again I would ask all the panelists that if you can summarize your statements, it would be appreciated. There are two more panels to go through and I just don't want to keep them waiting so long.

Our next witness is Dr. Edwin Martin, Human Resources Center at Albertson, NY, accompanied by Mr. Smith.

TESTIMONY OF EDWIN W. MARTIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HUMAN RESOURCES CENTER, ACCOMPANIED BY WILLIAM H. SMITH

Dr. MARTIN. Chairman Mitchell, members of the committee, I am Edwin W. Martin, president and chief executive officer of the Human Resources Center, the National Center on Employment of the Disabled, and I am here today to support H.R. 3866, introduced by Congressman Bob Mrazek and a number of members of this committee and of the House. He has been active for his constituents in Long Island. We appreciate him understanding the problems for disabled people and for introducing this legislation to be helpful to the disabled community, not only in Long Island, but across the Nation.

Prior to joining the Human Resources Center, I served as Assistant Secretary for Special Education and Rehabilitative Services in the U.S. Department of Education and from 1969 to 1979 as Director of the Federal Bureau of Education for the Handicapped.

I also worked up here as well as downtown. In fact, this week is my 20th anniversary of coming to work for Chairman Adam Clayton Powell on the Labor and Education Committee where I worked as staff director for the Subcommittee on the Handicapped, chaired by Hugh Carey, when he introduced the first Education for the Handicapped Act in 1966.

On the plane, I realized that it was 20 years ago this week that we began those activities.

Mr. MITCHELL. There was a significant amount of good accomplished during that timeframe. America really started to set its priorities in the right direction.

Dr. MARTIN. My friend, Bill Smith, pointed out that 30 years ago this same week, he came here on a high school trip.

Mr. MITCHELL. I don't think that is quite germane. Please go ahead.

Dr. MARTIN. My current responsibilities include responsibility for a division of the Human Resources Center, Abilities, Inc., a nonprofit firm which employs disabled people in a variety of electronic, mechanical, business, and clerical activities.

The company provides people with disabilities with competitive work experience and wages and prepares many to join the work force in the New York metropolitan area. In more than 30 years of its existence, Abilities, Inc. has assisted thousands of disabled people into jobs as wage earners and taxpayers in the productive economy.

For a number of years, Abilities has played an important role in helping the Nation's Armed Forces and defense industries, as well

as major domestic corporations such as IBM, Equitable Life Assurance, AT&T, and others by performing contracts or subcontract work for these organizations.

For example, we have built and restored telephone equipmer , built harness and cable wire assemblies for the F-4 Phantom jets from the earliest days of their construction by McDonnell-Douglas, and now provide the replacement assemblies directly for DOD.

We also provided sophisticated subassemblies for the F-16, for Harrier jets, and the Hawk missile system. When the provision of the Small Business Act expired, which had allowed nonprofit organizations serving the disabled to compete for funds, which are set aside for small businesses, Abilities, Inc. lost hundreds of thousands of dollars of Government-related work over 18 months to 2 years and has gradually had to reduce our work force by approximately 10 percent.

Mr. Chairman, these were contracts in which Abilities was low bidder or attempting to be.

For example, recently, we lost a contract offered by the Redstone Arsenal for $400,000, much larger than our usual work orders. This one happened to be a major cable contract.

In all, we believe we were the lowest bidder on 16 contracts totaling over $1.2 million. There are many more examples we could provide, and could be even more, but under the current policy of not allowing nonprofits to participate, opportunities to even compete are fruitless and so we have not offered our services where ineligible.

I might add here, Mr. Chairman, that Abilities, Inc., has operated, in recent years, slightly in the red, although we attempt to break even. This is not a lucrative profitmaking enterprise for us. The reason we are unable to break even is because we do employ people who have somewhat less capability and yet we are still maintaining competitive wages.

I spent many years working with the Congress to help develop the Education for All Handicapped Childrens Act of 1975 with bipartisan leadership in the Congress particularly from John Brademas from Indiana and Al Quie from Minnesota as well as members of this committee, such as Neal Smith and Silvio Conte.

This very successful legislation, which is helping more than 4 million children receive appropriate special education services this year, provides disabled children with an appropriate education. However, it is something of a hollow victory, unless we can help these same individuals find their way into the work force. Mr. Chairman, I am sure you are aware that the prospects for disabled people finding employment in our society are even less than that for any other sector of our population.

I was interested in a recent Harris poll released in the last few months by the National Council on the Handicapped that pretty much confirms the 1980 census data that showed that only 42 percent of disabled men are employed as opposed to 88 percent of nondisabled men. Employment of disabled women actually declined in the 1970's by 2.5 percent, while employment of nondisabled women increased from 45 to 64 percent. Most shocking of all is that in 1980, disabled men earned only an average of $7,000, compared to $18,000 for nondisabled, and two-thirds of disabled women had in-

comes of less than $4,000. It is hard to understand any resistanace to encouraging the gainful employment of the disabled in the face of these facts.

These statistics still are true. Disabled people in the productive sector lag far below that of nondisabled people. More than half of the disabled people are being paid under the poverty line in the productive sector, the competitive sector.

Now, of the $37½-billion set-aside from 1981 to 1983, no more than $7 million was spent for disabled workers. That is .0002 percent. That is not a clear threat to the Nation's businessmen. We work with them. We do contract for small business people as well as large companies. I realize that while a particular company may have some difficulty, the overall problem is negligible. I think there should be protection given a company, that might otherwise be severely affected, not by this competitive authority we seek, but by the Javits-Wagner-O'Day legislation.

A small fraction of money is not a threat. Particularly, Mr. Chairman, if we look at the alternatives. The people who left us in this last year, because these contracts were not available. What is going to happen to those people if they can't get jobs? And we know that 42 percent of disabled persons as opposed to 80 percent of nondisabled are in the work force. They are going to have to apply for Social Security income. They are going to have to apply for Social Security disability income. They are going to wind up being a responsibility, at least in part, of the taxpayers, unless they are offered the opportunity to work, and they want to work.

We estimate that more than $250,000 is lost to the productive economy for each one of the persons who turns around from earning an average salary of $10,000, to having to rely on Social Security or other welfare assistance. I simply can't imagine any justification for preventing disabled people from participating in this small business program that would be sufficient to offset the gains for our society in both human and financial terms.

I might say that in all of these contracts we have lost, taxpayers have had to pay more money for the services that we were unable to perform for the Government because we were the low bidders. We are not always the low bidder. There are companies that operate in the private sector that, for example, pay lower wages than we do and no health benefits. They pay the strict minimum wage, and offer no benefits to their employees and in many instances, are able to undercut our costs, because we also have the higher cost of some disabled workers who are not fully productive.

In 1981 GAO did a study on this. Certain of the questions you asked the Administrator from the Small Business Administration earlier are answered in that study. Basically, the findings of the study were that there are extra costs associated with running programs for severely handicapped people. Those costs are offset by the tax free status of the nonprofit companies and so the nonprofit status does not provide a competitive advantage.

Mr. Smith and myself are not involved with a sheltered workshop. We happen to run a program which pays at least the minimum wage but there are the kinds of people we can't work with on that basis, the severely handicapped people, mentally retarded, emotionally disturbed people, who do require additional services.

That is why the Labor Committee and Labor Department has continued to support that particular provision that allows subminimum wages in some instances.

I want to say in closing, I brought along a plaque today, which was awarded by the Department of Defense for error free work. We smile a little bit about it because we know we are not error free. We evidently came in with less than 1-percent error. We were allowed to fly a special flag over the factory for a year and have displayed this plaque as tribute to the highly qualified work that disabled people have done in support of our country.

I also brought along a poster, really a calendar. It is a calendar from Japan's Abilities Inc., which was patterned after ours, and which is one of a number of 50 or so in the world, independent organizations around the world, even Lebanon—we hope. The work that we do in this area is helpful not only here but as a model for programs around the world.

I have asked Bill Smith, senior management engineer for Abilities, to join me today as a man who has the ability to perform highly valuable work on our Nation's behalf, and also to help other disabled people perform similar work as his colleagues in Abilities.

In sum there are two points I would like to make before I introduce Bill Smith.

One, that the various groups that make up the population of the disabled—the mentally retarded, the learning disabled, the restored mental health, the physically disabled and so forth, and the deaf and blind—9 out of 10 of the disabled people are of the mentally retarded, the learning disabled, mental health and physically disabled. Only 10 percent is divided between the deaf and blind. The individuals helped by this program are predominately retarded persons, physically disabled persons, person who were mentally ill, and the learning disabled, and they need this help very, very much.

I thank you for this opportunity to testify very much. I asked Bill Smith to come along as a disabled person. He has worked for more than 25 years helping other disabled persons. We are not looking for a free ride, we are looking for the chance to compete in a free society.

I will let Bill Smith speak for himself about the impact that our program has had on the lives of disabled persons, but I do want to say in closing, that I hope you will agree that organizations like ours should be able to participate under this act under the legislation introduced by Congressman Mrazek and others on this committee. We are a model not only for the United States but our procedures also have been replicated around the world. This year we have had visitors from China, attempting to see what lessons they might learn from us about productive work for their citizens with disabilities. H.R. 3866 provides a maximum of $100 million out of $15 billion—1/150 of the total—less than 1 percent to help establish independence, dignity, and productivity for disabled people and a high-quality, economically beneficial program for the taxpayers of the United States. Mr. Chairman, I urge you and your colleagues to support this legislation and I do thank you. Mr. Smith and I would answer any questions you might have.

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Mr. MITCHELL. Dr. Martin, before you go on, is Ability, Inc. in Japan?

Dr. MARTIN. Yes, sir.

Mr. MITCHELL. You are planning one in Lebanon?

Dr. MARTIN. There is one in Lebanon.

Mr. MITCHELL. This is a multinational corporation we are dealing with?

Mr. MARTIN. No; these are all independents. Over the 30 years they have come to see our operations. They felt it was something they wanted to do. We have no financial or administrative interest in them other than as friends, as colleagues. We try to help them along the way.

Mr. MITCHELL. Mr. Smith, I see you have a copy of your testimony. Without objection, that testimony will be submitted for the record. I would ask you to be very, very brief. We did not anticipate—I had no indication that Mr. Smith would be a witness testifying, so we will see that your statement is put in the record, if you would make a very, very brief statement rather than reading.

Dr. MARTIN. It will be just 1 or 2 minutes. We didn't plan on longer than that. I think we did try to mention to counsel we might bring someone along. I hope we haven't inconvenienced you.

TESTIMONY OF WILLIAM H. SMITH, SENIOR MANUFACTURING ENGINEER, ABILITIES, INC.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, as a graduate of Clarkson College of Technology and an employee of Abilities for 25 years, I am honored and privileged to share with you my views and experiences as a disabled worker in a nonprofit facility.

Mr. Chairman, we are not a sheltered workshop and have no intention of training our clients and employees to perform low-level work, but we do intend to train and rehabilitate our employees with high skills so that they can reach their highest potential.

The meaningful employment of our Nation's handicapped is essential and will be a growing problem. I know that the Health Institute Survey reports that some 15 percent of our population is limited by a chronic health condition and the report by DeJon and Lifchez, just 3 years ago, suggests that the incidence of severe disability is increasing and indeed, during their 13-year study, did increase by over 70 percent.

Private commerce and industry will hire the disabled to meet Federal and State mandates, but these firms are generally not equipped nor committed to meeting the unique requirements for successfully evaluating, training, and placing the disabled worker.

Facilities such as ours are far more than employment bases for the handicapped. We are engaged in work simplification, job and task analysis, the matching of motor skills to job requirements, bioengineering, the removal of architectural barriers, and truly, we serve as a research base for the free enterprise system to which we are dedicated.

The Abilities workshop is far more than a high technology production facility, it is at the same time a teaching institution, an enterprise in which people from throughout the world come to learn

and even intern. It is an arena that demonstrates the competitive employment of the handicapped at all levels.

To compete in bidding DOD contracts, we must acquire administrative skills as well as hands-on skills to meet the quality standards set forth. To sustain these skills and to keep the ceiling open for those aspiring to grow to meet the ever-rising quality, technical, and workmanship standards, it is necessary to have the opportunity to work within this domain. Unless one knows that the work being performed has an attached importance, the personal sense of worth tends to diminish and apathy soon follows. To be competitive and ever growing, one must be challenged and be confident that the skills being acquired are meaningful. We, at Abilities, support each person. To do this, we must provide challenging work on a competitive basis.

Abilities has a long history of competitive subcontracting. Originally support from large organizations such as Grumman, Sperry, McDonnell Douglas, and Bendix, to name a few, gave us more than just work to keep us busy. The work experience has been retained and sustained by many dedicated people over the past 30 years. My colleagues, Arthur Rose in purchasing, Luigi Lazzaroulo in manufacturing, Gerard Walsh and Ray Taylor in quality control, total over 100 years in experience. We support the quality and delivery demands diligently, knowing the experience shared was invaluable. These middle managers and myself opted to stay in this environment to teach and train. The reward of the extra effort required is the satisfaction received. As Luigi proudly states, "The smile returns to those that forgot how to smile."

The satisfaction my coworkers and I receive is the feeling of pride and the sense of accomplishment in knowing that the skills learned will lead to meeting the challenging demands of today's high technology. With my alma mater's motto as my guide, "A workman who needeth not be ashamed," I thank you for the privilege of addressing you.

Mr. MITCHELL. I have a number of questions. I am not able to raise all my questions because of time restraints, I might send them to you and ask that you respond to them for the record.

I think one of the major concerns—I don't know about my colleague, Mrs. Meyers—is that it has been my experience that we put an entity in place to help a group of people, and then very often that entity doesn't work, and we go off on another tangent. Now, the basic entity involved here is the Javits-Wagner-O'Day Act. In your opinion, would the legislation we are considering this morning be necessary if we increase the amount of awards under the Javits-Wagner-O'Day Act? We have got this thing in place specifically for you, and now you are talking about moving over to a permanent program under SBA.

I guess I am asking you, would a more feasible approach be to increase the amount of awards under Javits-Wagner-O'Day?

Dr. MARTIN. I would like to take a quick crack at answering that. One is that this program has given us the opportunity to learn new skills, to identify new kinds of work, and to perform work that is not necessarily available under Javits-Wagner-O'Day. There is a broad spectrum of skills that disabled people have and we had attempted to show that today, for example, the kind of work we do

on missile systems, very sophisticated work and at the other end, very simple clerical and mechanical work.

We find that the work we have done for the private sector is now being offered directly by the Government under the small business set-aside so that, for example, I mentioned F–4 cable, we originally did that for McDonnell Douglas. Now, the Defense Department buys those directly. If we couldn't compete for them, we can no longer do the work that has been set aside. We have been doing that work for 20 years, and so forth.

So I say to you, what we would require is to compete for a piece of the small business set-aside. This can be done carefully not to hurt the interest of other companies. There is only a small percentage of work for which we can compete successfully. As we all mentioned, it is a very small fraction, less than 1 percent, but it does allow us to go where the Government is buying. As we develop new skills, for example, data processing and data entry, we may be able to compete in that area where no Javits-Wagner-O'Day work is available. I think the free market should be allowed to work and disabled people should have a crack at it.

Mr. MITCHELL. Either of you gentlemen want to make a comment?

Dr. WOLK. I can understand why you would ask that question, but from the point of view of those who have been on the working end of this, as I indicated in my testimony, there are very limited kinds of work that our people can do. Very often, that kind of work comes up under small business set-aside, so that we have to pick and choose very carefully what we can do.

There may be billions of dollars of work going on. What our people can do is very limited. So that is an important part of it. There is one other side I think needs to be taken into consideration. We people in rehabilitation centers are not master businessmen and manufacturers. There is a great deal that we don't know about business. So again, some things that are available we don't know enough about to be sure we can do them. Again, it further limits the choice.

I think when you consider the benefits that we can give to this group of people, we need to have every advantage and I would absolutely, unequivocably say that it is a very important advantage to have the SBA set-aside available to us. We don't take a lot of it, but when we need something and it is there, we need it badly. That is what I think the point is.

Thank you.

Mr. MITCHELL. Mr. Barres.

Mr. BARRES. I think one of the things about the set-aside is it does not include a lot of capital requirements that might be necessary in some of the Javits-Wagner-O'Day jobs. This is so essential to the small workshop and there is not a lot of capital available.

Mr. MITCHELL. I am not prejudging or indicating how I will vote on this legislation, but I guess I would look at that which is now in place, and try to bring about some significant modifications of that.

Dr. Wolk, you have gotten small business contracts under the Set-Aside Program. What was the dollar value of those contracts, do you know?

Dr. WOLK. As a matter of fact, I had a sheet that has that information, but I don't have it here, now.

Mr. MITCHELL. That is all right.

Dr. WOLK. The dollar value is not very great. Can somebody find that sheet that I have with that on it?

Mr. MITCHELL. The other part of my question was, were any of these contracts passed over to you, under the Javits-Wagner-O'Day Program?

Dr. WOLK. Yes; I believe three of the four were passed over the Javits-Wagner-O'Day. The one we saw today was passed over.

Mr. MITCHELL. That is the kind of thing I am thinking about.

Dr. Martin, you too, got some contracts through Abilities?

Mr. MARTIN. Yes, sir.

Mr. MITCHELL. What was the total dollars?

Mr. MARTIN. I will have to supply that for the record. I don't know exactly.

[The requested information follows:]

From 1981–83 we received contracts from the Department of Defense [we believe most were under the SBA set-aside but don't have exact records] as follows:

	Number	Value
Fiscal year:		
1981–82	23	$383,247
1982–83	28	482,218
1983–84	25	600,874

In 1985–86 our DOD work dropped to 11 contracts for $193,792 [no SBA set-aside available].

Mr. MITCHELL. Yours is probably a more sophisticated operation, it seems to me, than you two. Has Ability bid on set-asides, and have you lost that bid to a for profit small business?

Mr. MARTIN. Yes; we do all the time. We bid on very many jobs, and we lose many more than we win. The reason for that, I mentioned to you before, is that we can't always be the people with the lowest overhead, and especially since we have a commitment to paying retirement and paying things that a lot of small companies don't do—they may even employ part-time workers to avoid benefits. We have not had a shift from any work that we do into Javits-Wagner-O'Day. There is one item that we made that was considered for such a switch, but in the couple of years it took, the Government stopped buying that item.

Mr. MITCHELL. I just have one question of you, Mr. Barres. I am a little confused. You indicated that the legislation we are looking at provides only a 3-year extension. I don't read the bill to say that. As I read the bill, it would be a permanent extension.

Mr. BARRES. I believe that was the Senate bill.

Mr. MITCHELL. Our present legislation would be a permanent extension, right?

Mr. BARRES. That is correct.

Mr. MITCHELL. Obviously—I don't have to ask you—you would support the permanent extension, right?

Mr. BARRES. Certainly.

Mr. MITCHELL. Gentlemen, I won't hold you. Thank you for taking the time to be with us this morning.

Our second panel consists of James Gashel, director of governmental affairs, National Federation of the Blind, accompanied by Charles Erickson, Kansas City, KS, and Bonnie Peterson, Milwaukee, WI.

Mrs. MEYERS. Before this panel starts, I would like to say that Mr. Erickson is a constituent of mine, and I am very pleased that he is here to be with us to testify this morning.

Mr. MITCHELL. Thank you very much, and I say we would like to pay a special welcome to Jim Gashel of Baltimore. Is that correct?

Mr. GASHEL. Yes, sir; I happen to be a constituent of yours.

Mr. MITCHELL. You don't even have to submit testimony, and to show you how infinitely prejudicial I am in favor of Baltimore constituents, I will ask you to lead off first.

TESTIMONY OF JAMES GASHEL, DIRECTOR, GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND, ACCOMPANIED BY CHARLES ERICKSON, KANSAS CITY, KS, AND BONNIE PETERSON, MILWAUKEE, WI

Mr. GASHEL. Thank you very much.

Mr. MITCHELL. Let me caution all of you, we do have statements and our time is getting very tight. If you would be as brief as possible in submitting the major points of your testimony it would be appreciated.

Mr. GASHEL. Thank you very much, Mr. Chairman.

Let me just say that I want to echo the statements that were made at the beginning of this hearing with respect to not getting mixed up between the Small Business Program and the Javits-Wagner-O'Day Program. Now, we are very sensitive to that particular problem and what we see is the fact that the management interests of sheltered workshops who have come in, and they have described themselves as rehabilitation facilities, are coming before the Congress and what they are really asking to do is to compete in the small business arena. In other words, they'd like a piece of the action of what is now going on for Government contracting for small business.

We happen to represent the worker point of view. As a matter of fact, Mr. Erickson and Ms. Peterson are workers in a sheltered workshop, they don't manage them, they work in them, and obviously from our point of view, it would be beneficial for the workshops to have more contracts, but what we have to look at is how are the workers in those workshops treated and when the workshops come in to ask Congress to participate in this Small Business Act, and to receive small business set-asides, we have to make a comparison as to how these workers would be treated if they were working for competitive small business.

Now, how they are treated under the Javits-Wagner-O'Day Act may be one thing. Maybe there are subminimum wages there and maybe most of the jobs are labor jobs and few blind people are in management and that sort of thing. We can talk about all those conditions that currently go on under Javits-Wagner-O'Day.

I think our message here, if nothing else, is that what Congress needs to do is to ask: What kind of a small business, or what kind of sheltered workshop in this case, do we really believe should be participating in the SBA Small Business Set-Aside Program? Is it the one that pays the workers $1.85 an hour or less than $1.67 an hour, less than half of the minimum wage? Is it a place that pays a quarter of the minimum wage or even less than that? Or is it a place where people can earn a decent living, where people have collective bargaining, if they wanted to be represented by a labor union, if they want to have all the health benefits, all the other things they would have if they worked in competitive small business?

The bottom line, what we are really saying here is since the workshops want to come in and compete in the small business arena, with competitive small business, then their workers should have the same rights and same benefits for purposes of this program that they would have if they worked in a competitive small business. Otherwise, the workshops that don't want to do that have the Javits-Wagner-O'Day Program, and their private contracts and other things.

I think we really have to segregate out what we are really talking about here. In my written statement the workshop profile that was pointed to as very illustrative of the problem was the Louisiana Association for the Blind. You can duplicate that in lots of workshops. What we pointed out first, there aren't any blind people in any management or supervisory positions in the workshop. There are some blind people in nonlabor, but 89 percent of the labor jobs are done by blind people. They do very few of the nonlabor jobs and none of the management jobs. As a result, you have got a wide pay disparity.

The pay division breaks down something like this in the labor jobs. Sighted people earn an average annual wage of $8,237.37, while blind people doing the same work on the same assembly line earn an average wage of $3,487.51. Now, in the management and nonlabor positions, as I say, most of these are nonlabor—talking about sighted people—earning an average wage of $8,184.84, while blind people earn an average wage of $4,626.03. On the bottom line, 57 percent of the workers at the Louisiana Association for the Blind are blind, yet they receive only 39 percent of the pay and fringe benefits of that association.

Forty-three percent of the work force is made up of people who are sighted, yet they receive 61 percent of the pay and fringe benefits. Now, we happen to think that a workshop that should be admitted to the Small Business Program ought to have a more even distribution of the jobs and a more even distribution of the pay, and the fringe benefits. If the jobs are to be distributed to 75 percent of the people who are blind, they should be all of the work force, not just the labor jobs. Then that segment of the work force, the blind segment, ought to get 75 percent of the pay and fringe benefits. Conversely, if it is going to be 70 percent, then it should be about 70 percent of the pay. We are not so mixed up on the percentage as we are on the fact that there ought to be an equitable distribution of the jobs and pay.

Now, we have made, in our written statement, four very specific recommendations for amendments to be included in this bill. If they are, then hopefully this bill in fact could be enacted into law. If they are not, we don't really believe the blind or handicapped workers are the beneficiaries. The management of the workshops may in fact be the beneficiaries but the workers are not.

Sheltered workshops in the last few years have been found to really walk a thin line between whether they are rehabilitation centers or regular businesses, but more often than not in recent years, the National Labor Relations Board that considered whether sheltered workshops are business or rehabilitation centers, has found that they are doing business in the generally accepted sense and they have been taking jurisdiction over the sheltered workshops and the Federal courts have been upholding the National Labor Relations Board in findings that they are businesses, and they have been applying the collective bargaining principles of the National Labor Relations Act to the sheltered workshops.

So the National Labor Relations Board and Federal courts have said these places are businesses, and they are going to be treated like businesses insofar as the labor laws are concerned.

We think Congress ought to, in looking at the Small Business Act, catch up to those findings of the National Labor Relations Board, treat the workshops as businesses, let them come into the Small Business Set-Aside Program, and make them treat their workers as those workers should be treated in competitive small business, with all of the rights and benefits that the workers, if they work in competitive small businesses, would have.

One final point. Just this: It is strictly ironic to us that at the very time that workshops would be asking this committee to admit them to the Small Business Set-Aside Program, they would also be asking another committee of the Congress—that is the Labor Standards Committee—to grant them a more discretionary subminimum wage. That legislation is now pending in the form of H.R. 2676, a bill on which there was a hearing last October, and at that hearing, the Department of Labor witnesses who testified admitted that if this legislation was approved, that they would then be in a position "To approve any wage above zero," in the sheltered workshops.

Mr. Chairman, fundamentally, whether it is in Javits-Wagner-O'Day or not, we don't agree with that principle, but we don't believe that while Congress is considering extending any wage above zero to the shelter workshops, that they also extend small business set-asides. We should really have a coordinated policy here and the coordinated policy ought to be that if workshops want to come into the Small Business Program, their workers should be treated as they would be in small businesses if they should come in. If they are not, they should not come in.

Thank you very much.

Mr. MITCHELL. Thank you.

[Mr. Gashel's prepared statement, with attachments, follows:]

Prepared Statement of James Gashel, Director, Governmental Affairs, National Federation of the Blind

Mr. Chairman, my name is James Gashel. I am Director of Governmental Affairs for the National Federation of the Blind. I am appearing in this hearing on behalf of the Federation. My address is 1800 Johnson Street, Baltimore, Maryland 21230; telephone (301) 659-9314. I greatly appreciate the opportunity you have extended to me to participate in this hearing and to provide our views relative to small business set-aside contracts for not-for-profit organizations operated "in the interest of" handicapped and blind individuals, commonly known as sheltered workshops.

Almost 20% of working age blind Americans who are employed work in sheltered workshops. The National Federation of the Blind provides them an opportunity to speak with a collective voice. Our members, more than 50,000 strong, are organized into state affiliates and local chapters in each state and most sizeable population areas. Our leaders, and the vast majority of our members, are blind. So when we talk about blindness and the programs that serve or employ blind people, we speak from personal experience. We know which programs work, and we know where repairs are needed.

Seventy percent of the employable blind people in this country are either unemployed or substantially underemployed. So, if we are going to get anything out of legislation such as H.R. 3866, Mr. Mrazek's

bill, pending in this Committee, our aim is to reduce the outrageously high rate of unemployed or underemployed working age blind people. Sheltered workshops as they exist today are not helping, but they could be improved. My presentation in this hearing will provide you with information to help you do that.

If the ultimate purpose of H.R. 3866 is to provide blind and handicapped people with more and better work opportunities, we share this objective. But the bill in its present form will not achieve our goal, Mr. Chairman. Absent certain features designed to insure employment opportunites for the blind and handicapped, to protect wages for the blind and handicapped workers, to guarantee rights of collective bargaining and observance of other normal labor standards, and to improve placement of blind and handicapped individuals in competitive employment outside of sheltered workshops, we cannot support this measure. What could we support?

The National Federation of the Blind strongly favors any legislation that will promote better work opportunities and fair employment practices for blind and handicapped individuals in sheltered workshops, as well as in competitive employment. Assuming that you share this goal, Mr. Chairman, we earnestly request your assistance and that of this Committee in making needed changes in H.R. 3866 when you consider this bill for mark-up and reporting to the House.

A WORKSHOP PROFILE

A description of a typical sheltered workshop might help to

set a framework for the recommended changes we intend to offer for H.R. 3866. The specimen workshop for this discussion is the Louisiana Association for the Blind, located in Shreveport. The figures I will cite come from 1982 and represent the pattern of this program's operation in the years before and since.

If you include all positions from direct labor to top management at the Louisiana Association for the Blind , there is a total workforce of 156 individuals. Seventy-four perform direct labor in the workshop, and 66 of these individuals are blind or handicapped. Only 8 of the direct labor workers are sighted with no reported handicaps. The Association employs 82 staff personnel, some of whom perform management, training, and other supervisory functions. Others provide services to the blind in the Shreveport community. Only 25 of the staff positions are held by persons who are blind or handicapped. Sighted employees hold the remaining 57 staff positions.

These numbers show that the blind and handicapped employees are predominantly grouped in the jobs classified as labor. Their pay is based on piece-rates. As for the salaried staff, most of them are sighted without handicaps. The figures actually show that the sighted more than the blind are the principal beneficiaries of the Association's workshop operations. For instance, the total payroll is $876,575.34, of which sighted employees receive about 61%, or $533,233.57. Blind employees receive 39% of the Association's payroll, or $338,883.88. Direct labor workers who are blind receive average annual pay of $3,487.51, while the average annual pay for sighted laborers is $8,237.37. Similarly, blind people in staff positions receive

about half the pay of their sighted counterparts--$8,184.84 for the sighted, as opposed to $4,626.03 for the blind.

With wages as low as these, it is obvious that there must be many layoffs and little work at the Association. But aqain, the sighted work most and the blind are let qo. In 1982 the average blind laborer at the Association worked only a little over 928 hours, less than half a year. His sighted counterpart laborers averaged 1,957 hours of work, virtually a full year. The lowest wage, 96 cents an hour, is paid to blind persons with other handicaps in the Work Activities Center of the Association. Those in the Center who are just blind may earn as low as $1.65 an hour. But remember, no one who is sighted at the Association or anywhere else in this country, may be paid less than the Federal minimum wage, $3.35 per hour. In point of fact, the average sighted laborer at the Louisiana Association earns $4.21 per hour, far more than the 96 cents that the Association pays to some who are blind and handicapped.

Now for the bottom line. Eighty-nine of the Association's 156 employees are blind. So, the blind represent 57% of the entire workforce. Eighty-seven percent of the labor jobs are held by blind workers, but only 29% of the staff positions are held by the blind. This disparity in the distribution of the blind throughout the Association's workforce results in an enormous pay imbalance. Although the blind represent 57% of the workforce, they receive only 39% of the pay. But the sighted, who represent 43% of the workforce, receive 61% of the pay. That's what the figures show. Pay levels in the Louisiana

workshop seem to depend strictly upon the extent of a person's handicap or blindness. The best jobs and the best pay go to sighted individuals who do not have handicaps. By contrast, workers who are blind only or blind with handicaps hold the lowest level jobs and receive the lowest pay.

I emphasize that the Louisiana Association is absolutely typical of the nonprofit industries that now seek admission to section 15(c) of the Small Business Act. I would challenge any of these workshops to show you a workforce that has blind and handicapped people significantly involved in management and supervision. And more to the point, I would challenge any of these workshops to show you that the percentage of pay for workers who are blind or handicapped even approximates the percentage of the workforce represented by employees who are blind or handicapped. In other words, in a workshop where 57% of all employees are blind or handicapped, they ought to be receiving 55%, 57%, or even 60% of the pay. That is the fair distribution I am talking about. But, Mr. Chairman, you won't find that kind of equitable pay distribution in the workshops. We find that to be an unacceptable condition.

EXISTING LAW

The profile of the Louisiana workshop just presented shows that work opportunites for the blind and handicapped are principally found in the direct labor positions, whereas employment for the sighted and nonhandicapped is in management and supervisory positions. Also, the sighted, in all job classifications, are paid about twice as much as the blind or the

handicapped. These conditions arise from two existing Federal laws--the Javits-Wagner-O'Day Act, and the Fair Labor Standards Act--both originally enacted in 1938.

Under the Javits-Wagner-O'Day Act, sheltered workshops are able to qualify for noncompetitive government contracts if 75% of the direct labor in the workshop is performed by blind or other severely handicapped individuals. There are absolutely no requirements for blind or other severely handicapped people to be working in management or supervisory positions. Similarly, there are no requirements pertaining to pay distribution, such as a minimum percentage of pay for the blind or handicapped, or some other concept to assure that these employees are fairly benefiting from the workshop's operation. The assumption of the Javits-Wagner-O'Day Act is merely that providing the Federal business will result in jobs for the blind and handicapped, and the jobs are supposed to be direct labor.

As for pay, the requirements which apply to sheltered workshops are mainly found in section 14(c) of the Fair Labor Standards Act. This section provides several types of exemptions from the minimum wage, all of which are applicable to handicapped workers in sheltered workshops. The exemptions granted by the Secretary of Labor under section 14(c) permit wages for blind and handicapped individuals to be as low as 25% of the Federal minimum wage. Further exemptions which apply to units known as "work activities centers" allow wages even below 25% of the Federal minimum. Industries classified as "regular workshops" are required to pay the blind and handicapped workers at least

50% of the minimum wage, but exemptions for individual workers below the 50% subminimum will be granted if the proper forms are filed with the Department of Labor.

The provisions of existing law just described show that workshops already enjoy a special status in obtaining noncompetitive Federal contracts and in operating under labor standards that are less stringent than the requirements which apply to their counterparts in competitive small business. The question which Congress should now examine in the present consideration of extending small business set aside contracts to workshops is whether under existing laws the blind and handicapped workers are actually getting a fair shake. Are these not-for-profit organizations actually operated "in the interest of" handicapped individuals? The evidence shows that they are not.

COLLECTIVE BARGAINING

Are sheltered workshops subject to the jurisdiction of the National Labor Relations Act? That is a subject which has been hotly debated. Without the collective bargaining rights which their counterparts in competetive small business have, the blind and handicapped workers in workshops have no mechanism to negotiate pay equity, layoff protections and recall guarantees, improved working conditions, fringe benefit plans, or any other issue of labor/management relations that may arise. So employees in these workshops are largely at the mercy of the managers, and their only hope is that the managers will be motivated by a benevolent spirit.

In recent years, both the National Labor Relations Board and the Federal courts have been asked to rule on various union

representation requests presented by workers in sheltered workshops. More and more the tendency of the Board has been to assert jurisdiction, finding that the workshops are primarily conducting business activity in the generally accepted sense. In an unbroken string of four cases involving workshops for the blind over the past ten years, the National Labor Relations Board has asserted jurisdiction, and the appeals courts in two Federal circuits have concurred that collective bargaining in the workshops is a proper form of labor protection for these workers.

In opposition to these rulings, the workshops have claimed an exemption from the National Labor Relations Act. They have argued that Congress has consciously given them a preferred status by enacting the Javits-Wagner-O'Day Act and the Fair Labor Standards Act, both of which (according to the workshops) give deference to the management of the workshops in determining how their blind and handicapped workers will be treated. Believe it or not, the workshops actually contend that the blind and handicapped people who perform direct labor are not even employees. But that sophistry is not fooling the National Labor Relations Board or the Federal courts.

A principle fact that shines through the smokescreen of talk about rehabilitation and therapy for the handicapped is the productive output of the blind and handicapped workers in the workshops. Under the Javits-Wagner-O'Day Act alone last year 15,000 of these direct labor workers produced nearly $300 million in sales to the Federal government for their sheltered workshop employers. Yet these workers only received pay amounting to about

$41 million, or 13.66% of the gross sales. Need I say that the industry standard for labor pay as compared to gross sales far exceeds the 13.66% paid last year to the blind and handicapped workers holding labor jobs in the Javits-Wagner-O'Day program? I doubt that any labor union in this country would settle for such a paltry return for its members.

RECENT CONGRESSIONAL INVOLVEMENT

A 1983 investigation by the House of Representatives, Committee on Government Operations, uncovered several significant weaknesses in the administration of the Javits-Wagner-O'Day program. The report (H. Rep. 98-546) found "tokenism" in the employment of blind and handicapped persons in workshop jobs other than direct labor. Other findings revealed that blind and handicapped laborers are subjected to numerous violations of the Fair Labor Standards Act, often resulting in illegally low pay, below the Federal minimum wage. The Department of Labor's monitoring of workshop pay practices was found to be inadequate. Even more glaring, the investigation uncovered workshop tactics which amount to "union-busting." House investigators discovered that National Industries for the Blind (NIB) had used funds of the Javits-Wagner-O'Day program to employ legal counsel in efforts to combat labor organizing by the blind employees at several workshops. The report labelled this anti-labor campaign as "a gross transgression of proper administrative judgement."

Relevant sections from H. Rep. 98-546 are incorporated as an attachment to my statement. This investigation followed a similar one conducted from 1979 through 1981 by the United States

General Accounting Office. (See Report of the Comptroller General to The Honorable Barry Goldwater, Jr.--HRD-81-99, entitled "Stronger Federal Efforts Needed For Providing Employment Opportunities And Enforcing Labor Standards In Sheltered Workshops.")

Despite the fact that each of these investigations has resulted in various recommendations intended to improve employment opportunities and to assure fair pay for the blind and handicapped workers, administrators of the Javits-Wagner-O'Day program still refuse to budge from "business as usual." Last year's report by the Senate Appropriations Committee (See S. Rep. 99-133, copy attached.) noted the continuing pattern of job and pay inequities in the workshops and established several specific reporting requirements to be met by the Javits-Wagner-O'Day program this year. But recent testimony before the House Appropriations Committee (copy attached) continues to show a pattern of ignoring the Congressional directives for change. Under the circumstances, Congress should insist that reforms in sheltered workshops must be made as part of extending to the workshops any new source of Federal business. Otherwise, we will continue to have "business as usual" in the workshops, with low pay, job inequities, and union-busting.

RECOMMENDATIONS FOR H.R. 3866

If Federal small business set aside contracts are extended to sheltered workshops, Congress should require the workshops to provide better work opportunities and fair employment practices for the blind and handicapped employees.

(1) An employment standard should be established which is not limited to direct labor jobs. In this respect, H.R. 3866 currently has no employment standard for the blind and handicapped whatsoever. To remedy this, we are suggesting that a standard be established for the entire workforce, not just the direct labor jobs. We specifically reject the limited, restrictive, and discriminatory standard for employment now found in the Javits-Wagner-O'Day Act. Seventy-five percent of all work hours to be performed by the blind or handicapped would be an acceptable standard in our opinion. But the issue is not the precise percentage. Whatever the percentage, the Small Business Act should not perpetuate an employment standard for the blind and handicapped which has proven to be a severe limitation on employment opportunites in jobs other than direct labor in the workshops.

(2) A pay standard for blind and handicapped workers should be established to achieve job equity and fair distribution of compensation. H.R. 3866 has no pay standard currently. The pay standard should require that all workers receiving compensation under contracts awarded pursuant to section 15(c) of the Small Business Act shall be paid at least the Federal minimum wage. Beyond that, an overall pay standard should be included to assure that at a minimum there will be an approximate balance between the percentage of pay for blind and handicapped workers as compared to the percentage of their numbers in the workforce. In other words, if blind and handicapped individuals represent 70% of the entire workforce, then the standard for that workshop would be that the blind

and handicapped receive an approximate 70% pay distribution.

(3) All labor management and labor standards requirements otherwise applicable to similar small businesses should apply to workshops seeking contracts under section 15(c) of the Small Business Act. The Small Business Act should not perpetuate substandard labor conditions for blind and handicapped workers. Just as small business owners are required to bargain with their employees (if the employees elect to bargain and the business is big enough) so, too, the managers of sheltered workshops should bargain with their blind and handicapped employees, if the employees want a union. So, jurisdiction of the National Labor Relations Act and all other labor standards that otherwise apply to small businesses should apply to sheltered workshops that participate in the section 15(c) program, but only to the extent that such requirements apply to all other businesses. We are not seeking an expansion, just equity.

(4) Workshops that participate in section 15(c) of the Small Business Act should show, in advance of the receipt of any contract, that a working agreement has been established with agencies and industries in the community under which blind and handicapped individuals will be employed to fill existing and future job vacancies outside of the sheltered workshop. Then, actual job placement performance in accordance with such agreements should be evaluated as a principle factor in connection with the award of future Federal contracts under section 15(c). This recommendation would properly assist the workshops in fulfilling their role as transitional employment settings designed to prepare individuals to compete in the

nonsheltered workforce.

Mr. Chairman, as I have stated in several ways before, these four recommendations have the combined purpose of providing better employment opportunities and fair employment practices for blind and handicapped individuals who work in sheltered workshops. I must emphasize, however, that these proposals are specifically tailored to the objective of permitting workshops to qualify for small business set aside contracts under section 15(c). The standards for eligibility of the workshops, which we are proposing in these recommendations, are clearly proper requirements within the scope of section 15(c). We are not asking you to change the definition of a sheltered workshop under other laws or to strike down any of the existing special or preferred requirements that workshops hold claim to. What we are asking is that within the purview of the Small Business Act (and only for purposes of participating in the small business set aside program) workshops should be required to meet certain qualifying standards aimed at better work opportunities and fair employment practices for their blind and handicapped employees.

The authorization for workshops to have small business set aside contracts should at least obtain that goal. If it does, H.R. 3866 will truly be a beneficial addition to the growing body of Federal law designed to provide more employment opportunities and equal rights for blind and handicapped people. Reports by Congressional committees (both in the House of Representatives and in the Senate) confirm what I have said about limited employment opportunities and low pay for blind and handicapped workers under

present conditions as permitted by existing Federal laws. Similar findings have been made by the General Accounting Office, the Department of Labor, and even private research teams who have surveyed workshops pursuant to Congressionally ordered studies. In concluding this statement I would urge you to review these findings and thereby ensure that the legislation you develop and refine in this Committee will be properly written to achieve better employment opportunities and fair employment practices for the blind and handicapped in jobs provided pursuant to section 15(c) of the Small Business Act. Above all, the legislation you approve and report to the House should not perpetuate the limits and inequities of other programs. I thank you.

Union Calendar No. 312

98th Congress, 1st Session - - - - - - - - - - House Report No. 98-546

IMPROVEMENTS NEEDED IN THE ADMINISTRATION OF THE JAVITS-WAGNER-O'DAY ACT

SEVENTEENTH REPORT

BY THE

COMMITTEE ON GOVERNMENT OPERATIONS

together with

SUPPLEMENTAL VIEWS

NOVEMBER 15, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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NOVEMBER 15, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BROOKS, from the Committee on Government Operations, submitted the following

SEVENTEENTH REPORT

together with

SUPPLEMENTAL VIEWS

BASED ON A STUDY BY THE MANPOWER AND HOUSING SUBCOMMITTEE

On October 25, 1983, the Committee on Government Operations approved and adopted a report entitled "Improvements Needed in the Administration of the Javits-Wagner-O'Day Act." The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

The Javits-Wagner-O'Day Act (JWOD) was passed to create job opportunities for the nation's blind and severely handicapped individuals. Despite this laudable goal and the obvious merit of the intended beneficiaries, the complexities of serving the diverse client groups under the umbrella of a single program have reached tremendous proportions in recent years.

The Manpower and Housing Subcommittee of the House Government Operations Committee held hearings on the program May 17 and 18, 1983, entitled "The Administration of the Javits-Wagner-O'Day Act." The findings of those hearings and the related investigation are the basis of the following report.

II. BACKGROUND

Creation of employment opportunities for the blind has been a social and policy concern of this nation since the Wagner-O'Day Act was passed in 1938 and amended in 1971 to include the severely handicapped.

The original Wagner-O'Day Act of 1938 provided employment opportunities for only the blind under a Committee on Purchase of Blind Made Products (Committee).[1] Senator Jacob Javits worked to amend the law in 1971 so that it included the severely handicapped. The law was renamed the Javits-Wagner-O'Day Act (JWOD). Non-profit, sheltered workshops would produce or provide the commodities and services to be purchased by the federal government from a federal procurement list. The Committee (renamed the Committee for Purchase from the Blind and Other Severely Handicapped, CPBOSH, in the 1971 revision of the Act) is responsible for adding items that are reserved for production by blind and handicapped workshops.[2] The two nonprofit agencies, National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH), provide technical assistance and support services, run special projects, and allocate production contracts among affiliated sheltered workshops.[3] NIB is the older, having been established around the time of the original Wagner-O'Day Act.[4] NISH was created as a result of revisions in the law during the 1970's.

Since 1981, efforts have been made to further amend the Act as a result of bills introduced in both the House of Representatives and the Senate. The three major changes proposed by H.R. 6529 have generated much controversy but no change in the law to date. The changes were (1) transfer of CPBOSH authority to the Commerce Dept.; (2) quotas on blind and handicapped employees in direct and indirect labor positions with an equal proportion of wages, salaries, and benefits, (3) and participation of for profit industries in the production of JWOD goods and services.[5]

Also, minor changes for administrative purposes have been recommended by the General Accounting Office (GAO).[6] While not all of those recommendations have been adopted, the GAO has been asked by the House Government Operations investigating Subcommittee to monitor and report back on the responsiveness of the Committee (CPBOSH) and the Labor Department (DOL) to its recommendations for any future consideration of changes in the law.

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[1] Robert LeFevre, "The Story of the Wagner-O'Day Act"; New York, National Industries for the Blind, 1966.

[2] Hearings, "Amendments To The Wagner-O'Day Act," House Government Operations, Apr. 20 and 21, 1971.

[3] Mary F. Smith, "Employment of the Handicapped Under the Wagner-O'Day Act: Analysis of the Special Procurement Program and Related Legislation," Library of Congress—Congressional Research Service, July 6, 1982.

[4] LeFevre, Wagner-O'Day Act.

[5] Op. cit.

[6] General Accounting Office, "Stronger Federal Efforts Needed for Providing Employment Opportunities and Enforcing Labor Standards In Sheltered Workshops," HRD-81-99, Sept. 28, 1981.

III. FINDINGS AND CONCLUSIONS

A. The programs operated under the Javits-Wagner-O'Day Act (JWOD) have been administered by procedures at variance with the Sunshine Act. Recently, during hearings of the investigating Subcommittee, the Committee for Purchase from the Blind and Other Severely Handicapped (CPBOSH) announced that its meetings would now conform to the spirit of the Sunshine law. However, the investigating Subcommittee feels that open meetings should not only be a procedure of practice, but as prescribed by the Sunshine Act, should become the formally adopted policy of the CPBOSH.

1. The investigating Subcommittee also found the Central Non-Profit Agencies (CNA's), National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH) would do well to follow the Committee (CPBOSH) in assuring regularly scheduled access to their general board meetings. NISH currently provides some regular access for its workshop membership. NIB has a much more indirect form of input for its workshops (representation from organizations of workshops and related interest groups are on its Board). Both NIB and NISH are somewhat weak on provisions, as a matter of policy, for public access to some general scheduled meetings. While participation in CNA Board deliberations is more important to workshops, this should not preclude the public from its right to hear the issues being considered.

2. Since the May 1983 hearings on JWOD, all administrative and service agencies of the program have agreed, in principle, to more open access. The formal recognition of these changes or improvements as policy has not been put in place as of this writing, but are expected within the calendar year.

B. It was found that provisions and assurances of upward mobility were weak or non-existent as a matter of policy in the sheltered workshops participating in the program and among the technical assistance agencies. Although there were promotions to higher pay direct labor positions for blind and handicapped direct laborers, there are no clear rules, guidelines, or procedures that assure this to be policy. Since the program is intended to benefit blind and handicapped workers, there should be some procedural guidelines on substitution of non-blind or non-handicapped workers that fill capacities which might otherwise be held by capable intended beneficiaries.

Similarly, the investigating Subcommittee found no formal provisions or policies specifically for the advancement of blind and handicapped individuals into management and other non-direct labor positions. Although there are some blind and handicapped individuals sprinkled in non-direct labor capacities throughout the program (including the CNA's and supporting organizations), the program (especially workshops) remain vulnerable to charges of token representation of intended beneficiaries in non-direct labor capacities. The Committee (CPBOSH) has not taken a sufficient role on this issue, and makes inadequate provisions for monitoring upward mobility. This oversight should be addressed and remedied.

C. The Committee (CPBOSH) has failed to adequately monitor the activities and expenditures of the CNA's in the past. The Gen-

eral Accounting Office (GAO) report (HRD-81-99) also made this finding in 1982. Since then, CPBOSH has tightened its reporting requirements regarding financial data. A review of the adequacy of the new requirements is being undertaken. However, the Committee still does not provide sufficient direction and oversight of activities undertaken by the CNA's.

There are no provisions for limitations or parameters on legitimate activities for which the CNA's can spend money generated directly or indirectly by the federal program. There is an absence of general guidelines on what are legitimate technical assistance, advisory, and support roles of the CNA's. Without such direction, it is impossible for auditors to determine what are permissible and impermissible CNA activities. While the investigating Subcommittee finds the CNA undertakings to generally be laudable, and free of fraud and abuse, that is no protection against potential abuse or extraneous (although worthwhile) projects. Under current conditions virtually anything the CNA's choose to undertake is legitimate.

2. An example of an activity the investigating Subcommittee regards as impermissible is participation (directly or indirectly) in the litigation of a labor-management dispute. The participation of NIB in litigation against the right of blind workshop employees to unionize should not be an activity undertaken by any entity created, empowered, or authorized by the JWOD Act. Although there are benefits in retaining counsel for advising those served under the program of existing law, it is quite a different matter to support the position of one litigant over another (especially when both litigating parties are a part of the program).

D. The Department of Labor (DOL) has no procedure for routinely monitoring and verifying the issuance of individual work certificates. DOL currently relies on a certification from state vocational rehabilitation agencies when it issues a certificate to pay individuals less than 50 percent of the minimum wage in accordance with the Fair Labor Standards Act. But DOL has no system or process for making its own verification, and currently has no plans to do so. DOL verification of compliance with fair labor laws in sheltered workshops is almost entirely based on complaints about workshop conditions or practices. Even then, DOL seldom targets the process by which the individual certificate is issued. DOL has increased the frequency and sample of workshops reviewed, but no record is kept on the number of revocations, denials, or suspension of individual certificates based on their findings at those workshops. DOL estimates a refusal/revocation rate of approximately 1-2 percent; it has no hard data. Related inadequacies in DOL monitoring of compliance with fair labor laws were detailed in the aforementioned GAO report (HRD 81-99).

E. The investigating Subcommittee found no rational basis for the establishment of a 4 percent commission rate to be paid to the CNA's by the workshops from the production contracts they are awarded. Although the commission fee is the source of funding for the CNA's in executing their service, technical assistance, and support functions, there is no basic formula by which this figure was derived. It is agreed by both CNA's, (NIB and NISH) that the commission fee is their key source of funding. But NIB could function

with a lower rate and NISH would likely require a higher one. Furthermore, it is impossible to compute or estimate a more realistic commission rate since current financial, audit, and reporting data on CNA activities are inadequate.

F. The Committee (CPBOSH) has not exercised sufficient oversight of the CNA's activities in monitoring or reporting on workshop compliance with fair labor laws. Certain minimal level information should be maintained by the CNA compliance divisions and routinely reported to the Committee (CPBOSH). Currently, little or no cumulative data is maintained in some obvious areas such as the number of employees, wages, subsidies,and working conditions, by type of work certificate or convenient and practical catagories. Although the CNA's can provide some general information about these issues, no hard data is readily or routinely available. This data void in the area of wages is both a critical and sensitive oversight in terms of sound and fair management of the program.

G. The blind priority on new additions to the federal procurement list under the JWOD progam continues to be a point of contention for some members of the handicapped workshop community. The law recognizes this priority but makes no prescriptions for equitable settlement of legitimate complaints about when this priority is automatic in awarding production contracts. The Committee (CPBOSH) has not developed a formal policy detailing resolution of such questions because the law specifies only a blind priority. However, the mushrooming number of handicapped workshops competing for and developing new products to create employment opportunities for intended beneficiaries seems to mandate some policy (in the absence of one). This does not mean elimination of the blind priority. But there needs to be some assurance of fairness where there is fear that the blind priority takes unfair advantage of handicapped investment in development of a specific production capacity. NIB and NISH are currently working out a formal agreement on the "blind priority" issue, but this should not preclude the Committee (CPBOSH) having some policy of conflict resolution and involvement in the actual settlement since it is ultimately responsible for the administration of the JWOD program.

H. The investigating Subcommittee found disagreement over the identical administrative and wage policies for blind and handicapped workshops. It is neither apparent nor likely that the problems, capabilities, and performance goals of blind and handicapped workshops (or their employees) require such identical treatment. Furthermore, it is not evident that such treatment of all parties in all situations is efficient, effective, or desirable.

Insufficient attention has been paid by the Congress, the Committee (CPBOSH), and DOL to whether the identical administative and wage policies for the two groups are in the best interest of intended beneficiaries, the program, and taxpayers.

I. The Subcommittee found that not all federal agencies, or even the U.S. Congress, show much support for JWOD produced commodities and services as prescribed by federal procedures. While many agencies procure JWOD produced items through GSA, most federal agencies and the Congress pay little or no attention to such products and procure similar items from other sources. If the Federal Government (including Congress) does not faithfully live up to its promise to provide job opportunities under JWOD by purchasing the products and services produced, many existing as well as future employment opportunities for the blind and handicapped will disappear.

Calendar No. 283

99TH CONGRESS } SENATE { REPORT
1st Session } { 99-133

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION BILL, 1986

SEPTEMBER 9, 1985—Ordered to be printed

Mr. ABDNOR, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 3036]

The Committee on Appropriations, to which was referred the bill (H.R. 3036) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies for the fiscal year ending September 30, 1986, and for other purposes, reports to the Senate with various amendments, and presents herewith information relative to the changes recommended.

Amount of bill as passed by House	$13,237,868,125
Amount of decrease by Senate	−237,567,125
Amount of bill as reported to the Senate	12,990,301,000
Amount of estimate	12,211,347,000
The bill as reported to the Senate:	
Below the appropriations provided in 1985	−85,227,000
Over the estimates for 1986	+778,954,000
Below the House bill	−237,567,125

Advisory Committee on Federal Pay

1985 appropriation to date	$220,000
1986 budget estimate	222,000
House allowance	210,000
Committee recommendation	210,000

The Committee recommends an appropriation of $210,000 for the Advisory Committee on Federal Pay.

The Committee was appointed in accordance with the Federal Pay Comparability Act of 1970. The Committee assists the President in carrying out the policy of comparability in pay between major Federal statutory pay systems and private enterprise. The Committee reviews the annual report of the President's pay agent and considers the recommendations of representatives of Federal employees and other officials of the Federal Government. The Committee then prepares for the President an independent report with its findings and recommendations.

Committee for Purchase From the Blind and Other Severely Handicapped

1985 appropriation to date	$710,000
1986 budget estimate	749,000
House allowance	730,000
Committee recommendation	730,000

The Committee recommends the full budget request of $730,000 for the Committee for Purchase From the Blind and Other Severely Handicapped.

The Committee's primary objective is to increase the employment opportunities for the blind and other severely handicapped and, whenever possible, to prepare them to engage in normal competitive employment. The Committee determines which commodities and services are suitable for Government procurement from qualified nonprofit agencies serving the blind and other severely handicapped; publishes a procurement list of such commodities and services; determines the fair market price for commodities and services on the procurement list; and makes rules and regulations necessary to carry out the purposes of the act.

The Committee staff supervises the selection and assignment of new commodities and services, assists in establishing prices, reviews and adjusts these prices, verifies the qualifications of workshops, and monitors their performance.

Reports from the Committee for Purchase From the Blind and Other Severely Handicapped

The Committee is concerned over reports that the Committee for Purchase from the Blind and Other Severely Handicapped [CPBOSH] may be failing to provide adequately for expanding employment opportunities for blind and severely handicapped individuals. Particularly, there is evidence that blind and severely handicapped people are not recruited or promoted into management or supervisory positions in the sheltered workshops or in the central nonprofit agencies. These agencies

(National Industries for the Blind and National Industries for the Severely Handicapped) are designated by CPBOSH to operate on its behalf in administering this program and function directly under CPBOSH jurisdiction. Yet, there is evidence that the employment practices of the central nonprofit agencies (especially with respect to recruitment and promotion of blind and severely handicapped individuals) have not been closely monitored by CPBOSH. Also the Committee needs more complete financial information to assess the operations of these instrumentalities which participate substantially in the administration of the CPBOSH Program.

The Committee believes that the sheltered workshops and the central nonprofit agencies should become model employers for the utilization of blind and other severely handicapped individuals in all positions and at all levels of responsibility. To aid CPBOSH in achieving these goals, justifications submitted to the Committee, beginning with the 1987 appropriations request shall include specific data in sufficient detail to make possible a comparison of employment opportunities, pay, and benefits which the CPBOSH Program provides to: (1) blind individuals, (2) other severely handicapped individuals, and (3) other individuals who are neither blind nor severely handicapped. Specific data shall also be included to show the positions, pay, and benefits provided to blind individuals employed by National Industries for the Blind as compared to the positions, pay, and benefits provided to sighted individuals employed by that agency. Similar information shall likewise be submitted with regard to employment opportunities provided by National Industries for the Severely Handicapped.

The Committee is also advised that a substantial portion of the revenues expended to administer the CPBOSH Program are derived from commissions paid to the central nonprofit agencies from purchases made by the Government. The commission revenues finance the central nonprofit agencies and provide over 90 percent of the funding for this program. These payments derived from Federal purchases are above and beyond the amount appropriated directly for salaries and expenses of the CPBOSH. Beginning with the fiscal year 1987 appropriations request, CPBOSH is directed to submit cost information showing how the commission rate paid to each central nonprofit agency is justified. Such information shall also include the audited financial statement of each central nonprofit agency for the fiscal year just ended, a financial operating statement up to date for the fiscal year in progress, and a budget for the fiscal year in progress at the time the justifications are submitted.

Federal Election Commission

1985 appropriation to date	$13,016,000
1986 budget estimate	12,756,000
House allowance	12,433,000
Committee recommendation	12,433,000

The Committee recommends an appropriation of $12,433,000 for the Federal Election Commission [FEC].

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1987

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS

EDWARD R. ROYBAL, California, *Chairman*

JOSEPH P. ADDABBO, New York
DANIEL K. AKAKA, Hawaii
STENY H. HOYER, Maryland
RONALD D. COLEMAN, Texas
SIDNEY R. YATES, Illinois
JOE SKEEN, New Mexico
BILL LOWERY, California
FRANK R. WOLF, Virginia

AUBREY A. GUNNELS and C. WILLIAM SMITH, *Staff Assistants*

PART 4

	Page
National Archives and Records Administration	1
Advisory Committee on Federal Pay	65
Office of Personnel Management	171
Committee for Purchase From the Blind and Other Severely Handicapped	241
The Advisory Commission on Intergovernmental Relations	297
United States Tax Court	355
Federal Election Commission	403
Administrative Conference of the United States	489
U.S. Merit Systems Protection Board	539
U.S. Merit Systems Protection Board, Office of Special Counsel	587
Federal Labor Relations Authority	615

Printed for the use of the Committee on Appropriations

GRANTS BY NATIONAL INDUSTRIES FOR THE BLIND

Question (1) Provide a list of all organizations or groups that received grants from National Industries for the Blind since the beginning of NIB's fiscal year 1982. Provide the amount of each grant to each organization or group and state the purpose for which the funds were provided. Indicate which groups or organizations (if any) were not administering NIB affiliated workshops.

Answer: The Committee does not require information on the loan or grant programs conducted by the central nonprofit agencies since those programs are activities conducted outside the Committee's program and jurisdiction.

EMPLOYMENT OF BLIND AND HANDICAPPED

Question (2) During fiscal year 1985, how many blind persons were employed in direct labor jobs in sheltered workshops under the Committee's program? How many sighted non-handicapped? Also provide the number of severely handicapped direct labor workers.

Answer: During FY 1985, 4,088 blind persons were employed in blind workshops producing commodities or providing services for the Government under the Committee's program. The Committee is not authorized to collect data on the number of sighted workers. However, sighted workers (some of whom may have been handicapped) performed about 19% of the total direct labor related to the Committee's program in blind workshops in FY 1985.

Other severely handicapped workshops employed 11,430 blind and other severely handicapped persons in producing commodities or providing services for the Government under the Committee's program in FY 1985. Non-handicapped persons performed about 18% of the direct labor related to the Committee's program in other severely handicapped workshops in FY 1985.

Question (3) In workshops for the blind, during fiscal year 1985, what percentatge of the management and supervisory jobs were held by persons who are blind? Provide comparable information for workshops employing the other severely handicapped.

Answer: The Committee is not authorized to collect data on the employment of blind or other severely handicapped persons in management or supervisory jobs in participating workshops.

Question (4) Provide annual pay averages for employees of participating workshops as follows: (The averages should include employees in all positions, including employees in management and supervisory positions, as well as direct labor.)

(a) average annual pay rate for blind employees of workshops affiliated with NIB

Answer: The average hourly rate of pay of blind employees performing direct labor in blind workshops under the Committee's program in FY 1985 was $4.00 per hour.

(b) average annual pay rate for sighted employees of workshops affiliated with NIB

Answer: The Committee is not authorized to collect this data.

(c) average annual pay rate for blind employees working directly for NIB

Answer: The Committee has no basis for requiring this data.

(d) average annual pay rate for sighted employees working directly for NIB

Answer: The Committee has no basis for requiring this data.

(e) average annual pay rate for severely handicapped employees working for workshops affiliated with NISH

Answer: The average hourly rate of pay of severely handicapped employees performing direct labor in NISH workshops under the Committee' program in FY 1985 was $3.54 per hour.

(f) average annual pay rate for non-severely handicapped employees working for workshops affiliated with NISH

Answer: The Committee is not authorized to collect this data.

(g) average annual pay rate for severely handicapped employees working directly for NISH

Answer: The Committee has no basis for requiring this data.

(h) average annual pay rate for non-severely handicapped employees working directly for NISH

Answer: The Committee has no basis for requiring this data.

LABOR VIOLATIONS

Question (5) What steps does your Committee take in the event that the Department of Labor finds that a workshop in the program is in violation of federal requirements relating to pay, affirmative action, or other labor standards? Is the Committee aware of any such violations found by the Department of Labor with respect to participating workshops during fiscal years 1984 and 1985, or currently? If yes, which workshop(s) and what action(s) did your Committee take?

Answer: If the Department of Labor notifies the Committee that a workshop participating in the Committee's program is in violation of the applicable laws and regulations administered by that Department and is not taking steps to comply with those laws and regulations, the Committee can withdraw that workshop's authority

to continue to participate in the Committee's program. The Department of Labor has reported no workshops which met the above conditions in FY 1984, FY 1985, or to date in FY 1986.

UPWARD MOBILITY

Question (6) A House report from the 98th Congress found that the participating workshops and the central nonprofit agencies are vulnerable to charges of tokenism in their failure to employ blind and severely handicapped person in management and supervisory positions. The report recommended that the Committee require the workshops to demonstrate good faith efforts to upgrade both workers in production capacities as well as placing qualified blind and handicapped individuals in management and supervisory positions. Pursuant to this recommendation, please provide the subcommittee with any monitoring reports you have received from the CNA's. Does the Committee have any factual basis for reporting that progress is being made to employ more blind and severely handicapped persons in management and supervisory positions in the participating workshops? If so, please submit such information.

Answer: As indicated in the introductory information, the Committee is monitoring the central nonprofit agencies' affirmative action programs for the employment and advancement of blind and handicapped persons on their staffs. Copies of the affirmative action programs for the two central nonprofit agencies follow: [Information follows]

Question (7) During fiscal year 1985, how many new positions in management and supervision of workshops were obtained for blind and handicapped persons due to the addition of products or services to the procurement list?

Answer: The Committee is not authorized to collect this data.

Mr. MITCHELL. Mr. Erickson.

TESTIMONY OF CHARLES ERICKSON, KANSAS CITY, KS

Mr. ERICKSON. Thank you, Mr. Chairman.

Congresswoman Meyers, good to see you.

Mr. Chairman, I work at the Kansas Industries for the Blind in Kansas City, KS, as a mattress assembler. I have some deep concerns in regard to H.R. 3866. You have my testimony. My concern is to give you the concept of—and I have been a sighted individual before. I am blind now. I don't believe that I am any more or less a person, blind or sighted, but I believe this: I believe that the blind of this country are discriminated against, whether they can or can't do work, just for the fact that they are blind or handicapped.

The Kansas workshop I believe is a good workshop. I believe there is room for improvement. We are guaranteed $2.54 an hour, which I believe is too low. There are provisions where we are guaranteed $1.68. Perhaps I am lucky.

But the counterparts in competitive employment, if you will, doing the same type of work that I do, will range anywhere from $7 to $10 an hour. But that is guaranteed and we are guaranteed $2.54. To me, it doesn't make sense. I believe that we, the blind, can do the work—handicapped people can do the work. I believe the subsidies that have been given to the workshops before this is

put into effect, if there is one, need to be looked at to determine what they have done with the other subsidies—have they done what they intended to do.

It is my personal feeling that it should not be given to any workshop that does not pay the minimum wage for the simple reason, just because you are blind gives us the earmark that you can pay us any wage that you wish to pay. I don't believe that, because we can work.

I used to work in competitive employment. I used to work at a packing house in Iowa. The union wage in 1975, we started out at $1.25 an hour. In 1985, they were making $10.75 an hour. I said that is for some reason I don't see. The blind in that shop in Kansas can do what we could do and we do it. All we need is a piece of the action. If they want the contracts that is fine, pay us the minimum wage, pay us for the work we do.

Kansas City workshop on paper is a good shop. We have 84 percent of them blind, in direct line or out of 108. That is good. Sixteen are sighted. But now when you start breaking down, we averaged $6,300 last year of 1985. Break that down to $3.02 an hour and that is my wage, my own personal wages.

But you go to the sighted staff, civil service, are paid averaging—the highest is $25,000, the lowest one is $10,000. For some reason or another, there is no blind or handicapped individual on the administrative staff in the Kansas workshop. That does not seem right to me. Just because we are not afforded the opportunity to try, knowing full well that there are people that could do it throughout this good Nation in workshops. People who can be administrators, can be managers, can be supervisors. I believe that if they want, like with H.R. 3866, if the workshops want the piece of the action, that is fine. Everybody needs to make a living, but the way I see it, Mr. Chairman, is that they ought to at least pay us the minimum wage for this.

Thank you.

Mr. MITCHELL. Thank you.

[Mr. Erickson's prepared statement follows:]

PREPARED STATEMENT OF CHARLES ERICKSON, KANSAS CITY, KS

I am honored to have the opportunity to appear in this hearing of the House Small Business Committee. The bill (H.R. 3866) is of great interest to me and to the blind workers that I represent.

I am employed in the direct labor, assembly-line operation of Kansas Industries for the Blind. I work in the Kansas City shop, where my regular job is building mattresses. I became blind 14 years ago due to a chemical accident involving mace. Before becoming blind I held a variety of jobs, mostly of the skilled and unskilled labor type in industry. I hope my experience of working, both as a blind person and as a sighted person, will help you understand the plight of the blind shop workers in America today. I feel very deeply that we are not getting a fair shake, and I do not believe that the workshops should be handed another Federal bonus unless the workers get a fair piece of the action. That's my bottom line, fair treatment for the blind and handicapped workers.

There are lots down in the workshop who could be earning much better than we are. Take my own case. Last year, during 1985, I worked a full year for the state of Kansas as a mattress builder at the Kansas Industries for the Blind. I imagine that a sighted worker

doing a similar job in a regular plant (not a sheltered shop) would be paid anywhere from $7.00 an hour to $10.00 an hour. More likely than not, the union scale would be better than $7.00 an hour. That's a guaranteed wage.

Now, as a blind worker at the Kansas Industries for the Blind, my wage guarantee is $2.54 per hour, or about $5.00 an hour less than a sighted worker doing similar work in a regular plant. Some of the blind employees at Kansas Industries are guaranteed only $1.68 an hour. I guess I am one of the lucky ones. Machine operators in our plant are guaranteed $2.66 an hour if they are blind. Of course, anyone who is sighted (whether in our shop or anywhere) is guaranteed at least the minimum wage--$3.35.

Mr. Chairman, I do not think it is fair for us--for the blind--to have a lower wage guarantee than the sighted. In fact, that is downright unfair. My total income from the plant in 1985 amounted to $6,300.00, or an average of about $3.02 per hour. Remember, my sighted counterparts often earn $7.00 an hour and up. And none of them earn less than the Federal minimum wage, not even if they work in our plant. Here are some figures that might help you to understand more about the jobs and pay conditions in the workshops. At Kansas Industries for the Blind, over 84% of the direct labor workforce is blind. Some have handicaps in addition to blindness. There are 108 employees assigned to direct labor jobs, 91 are blind, 16 are sighted, and 1 is sighted with a handicap other than blindness. Average pay for the blind in direct labor is about $3.14 per hour, less than the Federal minimum wage. The sighted folks who do the same work

we do average $3.99 an hour. None of them are paid less than the minimum wage.

On paper, at least, Kansas Industries shows up pretty well in háring blind people for jobs other than direct labor. However, these non-labor positions are not the better paying ones. For instance, the blind who are not working on the assembly lines in the plant earn an average of $3.07 per hour. We are only a little better off in direct labor.

All of the managers and supervisors are sighted. I believe there are 16 of them altogether. They are classified employees for the state of Kansas, so their pay and fringe benefits are comparable to other state employees of similar rank and responsibility. On the average, the all-sighted management staff is paid $16,000.00 annually. The highest paid staff employee earns about $25,000.00, and the lowest about $10,000.00. But, all of them earn a lot more than I did last year, and none of them are blind. I am not complaining about their wages. I do think, however, that the blind should have a greater opportunity to be hired in as managers or supervisors in our shop and in the others I know of in this country. Why should the blind be limited to jobs which pay on piece-rate at about $6,000.00 a year, or even $7,000.00 a year, when many of us could do management jobs and earn about $15,000.00 or $16,000.00 a year, if we had the chance to do it? The fact is that we are not considered for these jobs. That is the unfairness of these workshops.

Mr. Chairman, I do not believe that the Small Business Act should open up to sheltered workshops that exist with the

job and pay inequities I have mentioned. If workshops want a piece of the action from small business set-asides, they should first agree to treat the blind and handicapped workers fairly and without discrimination. The conditions of limiting most of the blind to labor jobs only, and paying the blind wages that are far below those for sighted people, even for the same jobs, should be eliminated before Congress extends small business contracts to the workshops. If I were a union man, as I once was, at the Oscar Meyer meat packing plant in Iowa, I could count on a wage more than 3 times greater than what I can now make in the workshop for the blind. Yet, with good equipment and steady work, the blind workforce at our plant can produce as many mattresses as any average group of sighted employees can under similar conditions. The fact is that we are not allowed to do so. And, therefore, our opportunities for pay and advancement are limited. Mr. Chairman, whenever sheltered workshops ask Congress for a special concession, as they are now doing in this bill, they should be asked in return to justify what they are doing with the concessions that Congress has already granted. If a regular small business was coming before your Committee and asking for a special concession to employ blacks or women, they would be hooted out of the hall if they said that all of the blacks or women would be laborers and none of them could be managers. You would not tolerate that type of discrimination against women or the members of any minority group. So, too, Mr. Chairman, you should not extend a special concession to sheltered workshops who are not willing to treat the blind and the handicapped as equals in the American workforce.

Mr. MITCHELL. Thank you.

I think you have heard me make references to my own concern with subminimum wage. I have very strong feelings about that.

Ms. Peterson.

TESTIMONY OF BONNIE PETERSON, MILWAUKEE, WI

Ms. PETERSON. Thank you very much.

I am Bonnie Peterson. I am an employee of the Industries for the Blind in Milwaukee, WI. Thank you also for reading my testimony, so I will quote from it very briefly.

Industries for the Blind employs roughly 111 employees, 97 of those are in direct labor, of which I am one, a production worker. Of these, 14 are members of management, clerical, or supervision. All managerial, clerical, and supervisory positions are held exclusively and have been held exclusively by sighted, nonhandicapped individuals.

You will notice that there are attachments of affirmative action suits filed by myself finding Industries for the Blind guilty of lack of affirmative action, five counts. OSHA has found them guilty of serious safety violations, yet we are a sheltered workshop and I have only been sheltered from the working environment.

I have been sitting in the back listening to the testimony. Thus far though, I have heard interesting thoughts about how it is important to develop employment opportunities for the handicapped and for the blind and how hard it is to be unemployed. In Milwaukee, Mr. Chairman, our breweries are almost gone. We are not thought of as a city of beer anymore. There are people there that have worked for 40 or 50 years. They don't have a pension and they are sad because they are not employed either.

This is a Committee on Small Business, of business procedures. Things that I have heard proposed here, seemed to be much more toward education, work, development, and encouragement or cheerleading or something. The sighted nonhandicapped people are suffering too, people that have put their lives in the business are suffering and some of those small businesses are going to have to be my future employer, because Industries for the Blind will not promote me or any other blind person no matter how good our credentials. If they would act like a business, I doubt we would even need the Javits-Wagner-O'Day to begin with.

Industries for the Blind can produce 20,000 pens per assembly machine, four individuals. A pencil typing machine can make over 40,000, and this is for an 8-hour day. If you have the contracts we can make them as long as our management doesn't decide we have to be nonprofit, and we have to show the fact we can't produce. They slow down machinery and they refuse to hire people that we need, and the mechanic doesn't show up for hours. I have done 6 to 7 to 8 hours sitting down there on machines while they have been down. That is not what a business would do.

They offer no tuition reimbursement plan. I am paying off a tuition loan. That is not what a business would do. I don't know how they are developing employment opportunities. In my paper I equated it to a plantation, a plantation owner saying he was going to develop employment opportunities for his field hands and he

finds them 2 more acres of cotton to plant. I have nothing against cotton but if cotton is the only thing you can do, then it is slavery. I can't even work in the big house, I can't even get out of the plantation.

My résumé reads Industry for the Blind. What is that to future employers, what does that mean? It is like industries for the women or industries for the black, it is a killer right off the bat and they know it. I am sorry, but they do know it. It holds you back. We need to be helped.

If these contracts are to help us, fine, but if they are not, if it is just to make more cotton for us to plant, give it to the small businesses, please.

Thank you very much.

Mr. MITCHELL. Thank you.

[Ms. Peterson's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF BONNIE PETERSON, MILWAUKEE, WI

Mr. Chairman, my name is Bonnie Peterson. I have been an employee of Milwaukee Industries for the Blind since August 1979.

I greatly appreciate the opportunity you have extended to me to participate in this hearing and to share my views concerning the acquisition of small business set-aside contracts by tax-exempt sheltered workshops.

Milwaukee Industries for the Blind, 3220 West Vliet Street, Milwaukee, WI 53208 is a private, non-profit corporation operating under the protection of the Javits-Wagner-O'Day Act. It employs approximately 111 employees, 97 in direct labor, 14 in management, clerical, and supervision. Managerial, clerical, and supervisory positions are held exclusively by sighted non-handicapped individuals.

In 1985, the Office of Federal Contract Compliance Program (OFCCP) found Industries for the Blind in violation of Section 503 of the Rehabilitation Act of 1973 for its unfair hiring and lack of affirmative action practices. Violations included: (a) a substandard affirmative action plan, (b) running a job advertisement without an EEO tagline, (c) failing to review job requirements to make certain they were job-related and (d) failing to invite blind persons who may benefit under the firm's affirmative action plan to identify themselves.

Industries for the Blind was also found to have had serious safety violations by the Occupational Safety and Health Administration (OSHA). According to the Javits-Wagner-O'Day Act, participating workshops must comply with all safety standards set forth by the Occupational Safety and Health Administration. I have attached copies of both OFCCP and OSHA reports for the record.

I have been employed by Milwaukee Industries for the Blind since August, 1979 as a production worker. During this time, I maintained a full-time employee and student status, and obtained a B.A. degree in Professional Communication from Alverno College. Alverno has been highly praised by U.S. News and World Report and the New York Times Guide to Selective Colleges. Despite glowing letters of recommendation and a working knowledge of the plant and its employees, I am unable to achieve upward mobility. This is also true of my fellow employees. No matter how hard we work, the status quo remains the same. There are no role models for a blind person in this company.

It has been said that workshops cannot survive and pay a fair wage. The Fair Labor Standards Act allows workshops to pay less than the minimum wage. This is not the case at Milwaukee Industries for the Blind. Here starting wage for direct labor positions is $5.75 per hour. The average workers on a pen assembly machine can produce 20,000 pens per eight-hour day. An operator on a pencil tipping machine can easily make 40,000 printed pencils per eight-hour day. I have no reason to believe that our workers at Milwaukee Industries for the Blind are

necessarily any more productive than the blind individuals you would find in a comparable sheltered workshop anywhere else in the country. But in Kansas, the workers are only guaranteed $2.54 per hour, and the same is true in other workshops that do government work under the Javits-Wagner-O'Day Act. Milwaukee Industries for the Blind proves that such low wages are totally unnecessary.

Industries for the Blind has a tendency to encourage slowdowns in production. The speed of pen assembly machines is reduced. Machinery is not repaired at the usual rate. Substandard materials are then used which cause an increase in mechanical failure. Employees are then placed on overtime to make it seem as though all possible measures have been taken to meet shipping deadlines. But without these slowdowns in production, the blind at Milwaukee Industries could earn more if management would do its part.

In 1984, Milwaukee Industries for the Blind received $5.5million worth of Federal contracts to develop employment opportunities for the blind. Now they are asking to be considered for small business set-aside contracts.

Milwaukee Industries does not pay income or property taxes as does a small business. Milwaukee Industries for the Blind does not have a tuition reimbursement policy, nor will they promote their employees to positions where they would have a voice in the decision making process of the company, as a small business would do.

Industries for the Blind claims they need these contracts to develop employment opportunities for the blind. This is very

similar to a plantation owner in the Old South wanting to develop employment opportunities for his field hands, so he finds 10 more acres of cotton for them to pick.

The acquisition of small business set-aside contracts should encourage a more professional, dynamic and modernistic approach to management, by requiring sheltered workshops to adopt and maintain the same business standards and ethics that are exhibited, as a matter of course, by businesses seeking these contracts.

As one blind worker in a workshop, I believe it would do us no good to allow workshops to receive small business contracts if the workshops are not willing, in turn, to treat their workers with fairness. The blind workers deserve the opportunity to earn a fair wage and to better themselves by climbing the management ladder of the company. But if workshops are unwilling to provide these opportunities for us, Congress should not grant them another special concession. In other words, we do not want business as usual in the workshops, for that business is not good business as we know it. I thank you.

Bonnie L. Peterson
5331 South 8th Street
Milwaukee, Wisconsin 53221

COMPLAINANT
E840240

Industries for the Blind
3220 West Vliet Street
Milwaukee, Wisconsin 53208

CONTRACTOR

NOTIFICATION OF RESULTS OF INVESTIGATION

On November 27, 1984, the Office of Federal Contract Compliance Programs, U.S. Department of Labor conducted an investigation of the allegation of discrimination based on sex and handicap made in the complaint of Bonnie L. Peterson filed on July 27, 1984. Our investigation has resulted in the following findings:

1. Industries for the Blind is a government contractor and is not exempt from Section 503 of the Rehabilitation Act of 1973, as amended, and Executive Order 11246, as amended.

2. Bonnie L. Peterson is a woman and a handicapped individual (legally blind) within the meaning of Section 503 of the Rehabilitation Act of 1973, as amended, and Executive Order 11246, as amended.

3. The Complainant alleges the Contractor violated its obligations under the nondiscrimination and affirmative action provisions of its Federal contracts by failing to:

   a. Promote her to one of the two management positions filled during December, 1983 and January, 1984;

   b. Take required affirmative action to recruit and advance women and handicapped workers for and to non-direct labor positions; and

   c. Fulfill all their obligations under Section 503 of the Rehabilitation Act of 1973, as amended.

4. The Contractor's position is:

   a. The Complainant was not discriminated against because of her handicap in that the selection process for both vacancies (the Personnel Production and Materials Handling Manager and the Sales and Sales Promotion Manager) was nearly completed before Ms. Peterson submitted her resume;

b. Affirmative action recruitment for those positions included canvassing members of the Board of Directors and personal contacts in other organizations serving people with visual handicaps; and

c. Industries for the Blind has an Affirmative Action Program (AAP) and has made and will continue to make every effort to fulfill the affirmative action requirements to the best of its abilities.

5. Our investigation indicates that:

a. Recruiting for "Production Supervisor" was conducted during October of 1983 utilizing those methods discribed in 4b plus a blind advertisement without an EEO tagline in the Milwaukee Journal, (violation of paragraph 2 of the Equal Opportunity Clause included in all Federal contracts);

b. This position was changed to "Personnel, Production and Materials Handling Manager" and on December 16, 1983, was offered to and accepted by a non-handicapped male who was one of the 200 applicants;

c. An "Advertisting and Sales Promotion Manager" position was created and candidate(s) were selected from applications already on file;

d. On January 6, 1984, this new position was offered to and accepted by a non-handicapped male, who was a former part-time shop employee and originally applied for a management position in January, 1983;

e. Ms. Peterson submitted her letter of interest/resume on January 17, 1984;

f. Industries for the Blind has not invited all applicants and employees who believe themselves covered by the Act and who wish to benefit under the AAP to identify themselves as required by 41 CFR 60-741.5(c)(1);

g. Industries for the Blind has neither developed a schedule for review nor conducted a review of all physical or mental job qualification requirements for non-direct labor jobs to insure that, to the extent these requirements tend to screen out qualified handicapped individuals, they are job related and are consistent with business necessity and the safe performance on the job as required by 41 CFR 60-741.6 (c);

Peterson vs. Industries for the Blind

h. The AAP developed by Industries for the Blind does not address all policies, practices and procedures itemized in 60-741.6 (a)through (j) as required by 41 CFR 60-741.5(a); and

i. No information was posted regarding the location and hours during which the AAP is available for inspection by employees or applicants as required by 41 CFR 60-741.5(d).

6. Based on the findings of this investigation, there is insufficient evidence to conclude that the Contractor has violated its obligations under the nondiscrimination provisions of Executive Order 11246, as amended, or Section 503 of the Rehabilitation Act of 1973, as amended. There is however adequate evidence to conclude that Industries for the Blind has not demonstrated adequate affirmative action efforts to employ and advance in employment qualified handicapped individuals and women into all non-direct labor positions. Specifically the actions described in paragraph 5(a) and (f) through (i) above violated the Contractor's affirmative action obligations under the cited regulations.

As set forth in 41 CFR 60-1.24(c)(5) and 41 CFR 60-741.26 (g) the Director of the Office of Federal Contract Compliance Programs (OFCCP) may, upon request, reconsider this decision. If you desire reconsideration, a written request must be submitted to the Director, OFCCP, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 within 30 days of receipt of this notification. It should be understood that any reconsideration will be based on the written case record and will not be a reinvestigation. Rather, it will be an examination of the application of the law to the facts determined in the investigation. You must provide additional information and any new data in support of your position that the Regional decision was incorrect. Medical reports and/or opinions, signed written statements by supervisors or fellow workers, and other written documentation and supportive materials not already considered in the original decision are the types of information that would be appropriate to support your request for reconsideration by the Director. Failure to provide such information and documentation will cause the Director, OFCCP, to reject the request for reconsideration and close the case with no further opportunity for reconsideration.

In accordance with the regulations implementing the handicapped individuals and Executive Order 11246 programs (41 CFR 60-741.26 (g)(2) and 60-).24(c)(2)) the Department now invites Industries for the Blind to join with it to resolve this matter through conciliation by informal means. An

Peterson vs. Industries for the Blind

Equal Opportunity Specialist from this office will be in contact with Industries for the Blind within ten (10) days to begin the conciliation process.

On behalf of the United States Department of Labor

Peter M. Silva

PETER M. SILVA
Area Office Director

11/22/85
DATE

Occupational Safety and Health Administration

Citation and Notification of Penalty

(414) 291-3315
Henry S. Reuss Federal Plaza
310 W. Wisconsin Ave.-Suite 1180
Milwaukee, WI 53203

Type of Violation	# Of Violations
SERIOUS	1

The violation(s) described in the Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below

3. Issuance Date	4. Inspection Number
3/12/85	2338697
5. Reporting ID	6. CSHO ID
523400	88936
7. Optional Report No	8. Page No
657	1 of 2

10. Inspection Date(s)
3/4-8/85
11. Inspection Site
BANE

9. To Industries For The Blind
and its successors
3220 W. Vliet Street
Milwaukee, WI 53208

Penalties Are Due Within 15 Days of Receipt of This Notification Unless Contested (See enclosed Booklet)

Fine Sum May Be Changed Before Posting

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. The Citation must remain posted until the violations cited below have been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

This Citation describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed below are based on these violations. You must abate the violations referred to in this Citation by the dates listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. (See the enclosed booklet which outlines your rights and responsibilities and should be read in conjunction with this form.) You are further notified that unless you inform the Area Director in writing that you intend to contest the Citation or proposed penalties within 15 working days after receipt, this Citation and the proposed penalties will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the Citation is affirmed by the Review Commission.

12. Item Number / 13. Standard, Regulation or Section of the Act Violated / 14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident. (1a, 1b, 2a, 2b, and 2c)		
1a 29 CFR 1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by: ingoing nip points, rotary parts and/or flying chips or sparks. (a) Operators were exposed to ingoing nip point on mechanical [illegible] on Carlson Brush machine(s), located in the brush department. (b) Employees hand(s) were being exposed to ingoing nip points on the Harvey Pencil conveyor while removing jammed pencils, located on No. 1, No. 3, and No. 5 conveyor. (c) Employees were exposed to an reciprocating arm hazard on the brush maker machines located in the brush department.	Immediately	$240
1b 29 CFR 1910.212(a)(3)(ii): Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s): (a) Employees were being hit by flying parts located in the west pen machine department work area. (b) Employees hands were exposed to the points of operation hazard on a bag seals machine.	4/11/85	
2a 29 CFR 1910.219(c)(2)(i): Exposed part(s) of horizontal shafting were not protected by stationary casing(s) enclosing shafting completely or by trough(s) enclosing sides and top or sides and bottom of shafting: (a) Revolving surfaces of a shaft coupling(s) were not covered by a safety sleeve or cover on the Harvey conveyor(s), located in the east end of the building.	3/21/85	$180

17. Area Director: Gerald O. Cunninghae

TOTAL

19. OK TO PAY?

Total Penalty for This Citation

Make Checks Payable to: Department of Labor

Indicate Inspection Number on Remittance

NOTICE TO EMPLOYEES — The law gives an employee or his representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and penalty.

EMPLOYER DISCRIMINATION UNLAWFUL — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under the Act. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the U.S. Department of Labor Area Office at the address shown above.

EMPLOYER RIGHTS AND RESPONSIBILITIES — The enclosed booklet outlines employer rights and responsibilities and should be read in conjunction with this notification.

CITATION AND NOTIFICATION OF PENALTY

ORIGINAL

OSHA 2 (Rev. 1/90)

...Safety and Health Administration

...ed Notification of Penalty

(414) 291-3315
Henry S. Reuss Federal Plaza
310 W. Wisconsin Ave.-Suite 1180
Milwaukee, WI 53203

3. Issuance	Inspection Number
3/12/85	2338697
5. Reporting ID	6. CSHO ID
523400	R8936
7. Optional Report No	8. Page No
657	2 of 2

4. Type of Violation(s)	5. Citation Number(s)
SERIOUS	1

The violation(s) described in the Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

10. Inspection Date(s)
3/4-8/85
11. Inspection Site
SAME

Penalties Are Due Within 15 Days of Receipt of This Notification Unless Contested
(See enclosed booklet)

This Section May Be Detached Before Posting

...To ...ndustries For The Blind
and its successors
3220 W. Vliet Street
Milwaukee, WI 53208

...E LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. The ...tation must remain posted until the violations cited below have been abated or for 3 working days (excluding weekends and Federal holidays), whichever ...longer.
...e Citation describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed below are based on these violations. You must ...ate the violations referred to in this Citation by the dates listed below and pay the penalties proposed, unless within 15 working days (excluding weekends ...d Federal holidays) from your receipt of this Citation and penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address ...own above. (See the enclosed booklet which outlines your rights and responsibilities and should be read in conjunction with this form.) You are further ...tified that unless you inform the Area Director in writing that you intend to contest the Citation or proposed penalties within 15 working days after receipt, ...is Citation and the proposed penalties will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any ...rt or agency. Issuance of the Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided ...in the Act or, if contested, unless the Citation is affirmed by the Review Commission.

7. Item Number / 9. Standard, Regulation or Section of the Act Violated	11. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1	...9 CFR 1910.219(e)(3)(i): Vertical or inclined belt(s) were not ...nclosed by guard(s) conforming to the requirements specified at ...9 CFR 1910.219(m) and (o): (a) Employees were exposed to ingoing nip point hazards on ...elt and pulley(s) on the Carlson brush machine(s), located in the ...rush department.	4/11/85	
2	...9 CFR 1910.219(f)(3): Sprocket wheels and chains which were seven ...eet or less above the floors or platforms were not enclosed: (a) Employees hands were exposed to sprockey and chains ...azard on the Harvey pencil conveyor, located in the east work area.	4/11/85	

...Area Director: Gerald O. Cunningham — TOTAL — 18. $420

...OTICE TO EMPLOYEES — The law gives an employee or ...representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and penalty.

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...PLOYER RIGHTS AND RESPONSIBILITIES — The enclosed booklet outlines employer rights and responsibilities and ...ould be read in conjunction with this notification.

Total Penalty for This Citation

Make Check or Money Order Payable to: DOL, OSHA

Indicate Inspection Number on Remittance

...TATION AND NOTIFICATION OF PENALTY — ORIGINAL — OSHA 2 (Rev. 1/84)

U.S. Department of Labor
Occupational Safety and Health Administration

Citation and Notification of Penalty

(414) 291-3315
Henry S. Reuss Federal Plaza
310 W. Wisconsin Ave.-Suite 1180
Milwaukee, WI 53203

3. Issuance Date	4. Inspection Number
3/12/85	2338697
5. Reporting ID	6. CSHO ID
523400	R8926
7. Optional Report No	8. Page No
657	1 of 1

Inspection Type	Citation Number
OTHER	2

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

9. Inspection Date(s)
3/4-8/85
11. Inspection Site
SAME

Penalties Are Due Within 15 Days of Receipt of This Notification Unless Contested (See enclosed Booklet)

This Section May Be Detached Before Posting

9. To: Industries For The Blind
and its successors
3220 W. Villet Street
Milwaukee, WI 53208

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12. Item Number / 13. Standard, Regulation or Section of the Act Violated / 14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1 29 CFR 1910.106(e)(6)(i): Adequate precautions against the ignition of flammable vapors were not taken: (a) Flammable or combustible liquids were dispensed from a 55 gallon container without electrically interconnecting presenting a fire hazard.	Immediately	$0

17. Area Director: Gerald O. Cunningham

18. TOTAL $0

Total Penalty for This Citation

Make Check / Money Order Payable to DOL/OSHA

Indicate Inspection Number on Remittance

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Mr. MITCHELL. I guess I would ask of all three of the witnesses, am I correct in assuming that in general, in the workshops, there is not an established plan for upward mobility for the workers?

Mr. GASHEL. Well, I can speak in general and it certainly is true. As a matter of fact, the House report, which I have here, which went into the Javits-Wagner-O'Day Program extensively, Chairman Barney Frank's Subcommittee on Employment and Housing, Committee on Government Operations, did a very extensive investigation, Mr. Mitchell, of the Javits-Wagner-O'Day Program. They found in this report, that the representation of blind and handicapped people in the management and supervisory positions is tokenism. That is the condition created by this situation of the law, Javits-Wagner-O'Day, that says 75 percent of the direct labor must be done by blind or handicapped workers. If you promote somebody who is blind into a management job, you don't get any credit for that. Unless that person is just direct labor, there is no benefit. So it is beneficial to hire the sighted into the management and keep the blind in direct labor.

Mr. MITCHELL. Mr. Erickson, I was particularly struck by your testimony, the great disparity in terms of the wages between the blind and the sighted. Who sets the wage guarantee for the workshop?

Mr. ERICKSON. In Kansas City it is set through the State system. There is no mandate of a Federal minimum wage law. They will pay us $2.54. They got to the point where they saw you pay *x* number of percentage of the minimum wage. We have asked for raises, asked for more money. What they tell us is there is just no money available to pay us.

Mr. MITCHELL. Now, you get into a situation where you ask for more money and you feel that you deserve it, you don't have any recourse except to ask the management of that workshop.

Mr. ERICKSON. The management of the workshop and you work through the system. The bottom line is director of Social Rehabilitation Services in the State of Kansas. If he says, "No; there is no money available," we will go back to work boys.

Mr. MITCHELL. Is there any point of entry for a Federal review of that wage? Do you get any Federal contracts?

Mr. ERICKSON. Yes, sir; we get Government contracts, and private contracts, State contracts, yes sir.

Mr. MITCHELL. Ms. Peterson, I understand you have been with the Milwaukee Industry for the Blind for about 7 years?

Ms. PETERSON. Yes, sir.

Mr. MITCHELL. Have you ever been encouraged or offered a chance to move to a managerial or clerical or supervisory position?

Ms. PETERSON. No; they have done everything possible to prevent any of us from getting that. I have worked full time while I was also a full-time student at Alverna College, which has been highly rated in U.S. News & World Report. I graduated with a BA degree in communications, and actually I have more qualifications for the position of management of sales promotion or personnel manager. I know the company, I know the product, I know the people, I know the handicapped, I know the blindness issue. But it really doesn't matter.

Mr. MITCHELL. You said something that gave me a great deal of concern. You alluded to slowdowns.

Ms. PETERSON. Yes, sir.

Mr. MITCHELL. In production. That these slowdowns are deliberately staged?

Ms. PETERSON. They are suddenly staged, but they can be proven. If you look through Industries for the Blind records, at least for the years I have worked there, they take records every evening, governmental records and numbers on the machinery are taken down. The question that would occur to me is why, sometimes, can No. 4 assembly machine make 21,000 on and on, and all of a sudden for a period of 4 to 6 months it is 14,000, or 12,000, or 11,000, or less than that.

When we have asked questions concerning the problem they have said that we just had poor material or they are trying. When we ask for more workers, they can't do that or they tell us: "We don't have enough contracts, you want us to lay somebody off?" I am not here to say that anybody gets laid off, or loses their jobs, but we knew from shipping and receiving that the yellow slips are coming in. We had Government contracts coming out of our ears, we were coming in delinquent in all of them.

I would assume they are deliberately staged. This happens so suddenly. The mechanics would disappear for hours on end, but yet when the production is wanted, the few times that it is, you are expected to work and so we do. My opinion here can be corroborated by looking at the industry's records of the past.

Mr. MITCHELL. Just why do they do this? Is it to make sure that they retain nonprofit status or something?

Ms. PETERSON. I really do not know. We have sat around and thought maybe the mechanic was blackmailing the foreman because—we don't know. I don't have the information. I can only tell you how we sit around and don't work and how we do work, and how the records will show that the work has been done. That, I can tell you.

Mr. MITCHELL. Thank you.

Let me assure all three of you that I am going to weigh your testimony, I think the committee will obviously weigh your testimony very, very carefully before making any final decisions on the legislation we are having the hearing on this morning.

Mrs. MEYERS. I would like to say that we very much appreciate the testimony and appreciate your being here with us today.

Mr. MITCHELL. Our final panel consists of Daniel Schapiro & Co., Baltimore, MD; Blackfeet Indian Writing Co., Browning, MT, Lockley Bremner; Fraass Survival Systems, Inc., Bronx, NY, and Harry Offenhartz.

I have had many hearings in this committee. I know when you leave a business you lose money, so I know what it means to watch the shop, and therefore, I am especially grateful that you would take time to be with us.

Mr. SCHAPIRO. Thank you.

Mr. MITCHELL. I would urge you to be as brief as possible. I think we have copies of your statement. If you will just get to your major points that you want to make in your statement, that would be most appreciated.

TESTIMONY OF DANIEL SCHAPIRO & CO., BALTIMORE, MD

Mr. SCHAPIRO. Mine is very brief.

My name is Daniel Schapiro of Baltimore, MD. I am the founder of Daniel Schapiro & Co., and I am here representing the International Association of Wiping Cloth Manufacturers, an association of companies in the textile recycling industry. We are a very competitive industry, consisting of mostly small family owned companies. Since I learned of this hearing only last Thursday, I have not had sufficient time to prepare a complete presentation. However, I will try to explain as well as I can how H.R. 3866 would hurt our businesses.

Textile recycling is important for disposal of solid waste, which is a national problem. The source of our raw material is mostly from the nonprofit workshops which secure their textiles as charitable donations from the public. After the workshops remove the more desirable clothing items, which they sell in their own retail stores, they sell the leftover material to textile companies such as ours, which recycle these resources into many items for various uses. A large amount of this is exported, which assists the U.S. export trade, and a goodly percentage is processed for the wiping cloth trade.

Practically any industry with machinery needs wiping cloths and the General Services Administration [GSA] is the largest single purchaser of this commodity. Those industry members which have the necessary equipment bid on these Government orders. The volume of GSA orders, in many cases, has made the difference between continuing to run a plant and going out of business.

H.R. 3866 would authorize direct competition between members of our industry and workshops. Yet those workshops will have many built-in advantages in that competition. As I have already mentioned, the nonprofit workshops receive their supplies of raw materials as charitable donations. Thus, they receive their raw materials free. In addition, the nonprofit workshops do not have the taxes, minimum pay, and other such expenses our companies have, and are further subsidized by public and private grants that allow them to undercut our selling prices.

We have already had to deal with being excluded from competition for GSA business in several cases, due to the Javits-Wagner-O'Day Act. If the workshops are allowed to receive small business set-aside awards, I believe many in our industry will have to close up. Some of these companies depend on GSA for up to 70 or 80 percent of their volume. Our difficulties will be especially severe if a workshop can obtain a contract by competitive bid and then get it set-aside under the Javits-Wagner-O'Day Act.

The textile recycling industry is vital to the national interest. During World War II, we were declared essential and at one point critical. The Armed Forces and mobilization base industries must have wiping cloths to keep their military equipment and machinery clean to work properly. Today, the Nation faces the growing problem of disposing of tremendous amounts of solid waste. We find uses for these materials. If our industry is threatened, and many companies forced out of business, these services will be seriously hampered.

Several years ago we conducted a survey of our industry members, which does not include nonmembers of which there are a great number, and found that we employ more than 4,000 workers, the vast majority of whom are minority and/or handicapped. The unemployment rolls would certainly be increased if some of our industry members were to cease operations. However, we believe our companies and the employees in our companies deserve fair treatment, which H.R. 3866 would not provide.

Mr. MITCHELL. Thank you very much, Mr. Schapiro.

Mr. Bremner.

TESTIMONY OF LOCKLEY BREMNER, VICE PRESIDENT, BLACKFEET INDIAN WRITING CO., INC., BROWNING, MT

Mr. BREMNER. My name is Lockley Bremner. I am vice president of the Blackfeet Indian Writing Co., and as a member of the Blackfeet Indian Tribe, I appreciate the opportunity to come all the way from Montana yesterday, to testify here today, and to share with you how the Javits-Wagner-O'Day Act and H.R. 3866 has impacted our company and employment on our reservation and how it potentially threatens our existing Government business.

The Blackfeet Indian Writing Co. was organized to create employment on the Blackfeet Indian Reservation, where the unemployment rate reaches and sometimes exceeds 60 percent. The people don't have an opportunity to work because there are no jobs there.

The Blackfeet Indian Writing Co. was created through an effort of the Blackfeet Tribe and also the Small Business Administration, which we appreciate very much. We initially started production on a 60-percent set-aside on an 8(a) contract to manufacture general writing instruments—pencils and drawing pencils. In 1973 total gross sales in our company reached $1.1 million. Approximately half of that went directly to the Federal Government.

However, in that year, the Committee for the Purchase for the Blind and Severely Handicapped added all general writing instruments to the procurement list, denying our company's right to offer those pencils to the Government in the future. Instead, all future Government orders were allocated to the Industries for the Blind, Milwaukee, WI. Curiously, we did not learn of this action at the time, did not have an opportunity to defend ourselves, and to try to retain that business.

Mr. MITCHELL. I don't generally interrupt. Were you still in 8(a) status when this change took place?

Mr. BREMNER. Yes, sir; the financial impact of this tax was lessened initially because the blind workshop was not capable of manufacturing the pencils in question. For several years, it gave our company subcontracts to provide it with blank pencils, which this is an example, here. Blank pencils, which lacked only the erasers and the ferrule, so we manufactured the complete blank pencil, including lacquer. The blind industries put the eraser and ferrule on, which is an example of how the workshops can subcontract a majority of the labor while receiving a very short-term benefit.

In 1981, the workshops finally developed the capability to make the pencil, itself, and it has stopped issuing subcontracts to us. At

that point, we felt the full financial impact of the earlier decision by the committee, for our company was near bankruptcy at that time, and even today continues to suffer financially because of the loss in business.

In 1983, the Committee for Purchase struck again, this time removing from competitive procurement and giving to the workshop all contracts for thin lead pencils. This amounted to roughly $100,000 in sales to our company under the 8(a) Program.

As a result of the committee's action, we have been denied the opportunity to obtain those contracts under the Small Business Program. Our company's business and the members of the tribe have been severely affected by the actions of the Committee for Purchase. Largely as a result of the committee's action, our total Government sales have been reduced to less than 3 percent of our base sales.

In addition, between 1974 and 1981, we were required to lay off approximately 40 percent of our employees. Fortunately we have been able to recover from those losses by increased non-Government sales. Nonetheless, it is hard for the Blackfeet Indian people to understand the Government's policy that permits one disadvantaged group to displace another.

Although we were unaware of the committee's 1974 action, our company and our domestic pencil manufacturers vigorously oppose the committee's 1983 action, and in proceedings before the Committee for Purchase. Frankly, there is no indication that the committee paid any attention to what we said when it published its actions in the Federal Register. Its only explanation or response was that the action will not have a serious economic impact on any contractor. The Committee for Purchase, gave no consideration for the facts, in an attempt to help a workshop, would seriously injure a minority contractor.

Our company is very concerned about the possibility that Congress may amend the Small Business Act, which we thought was designed to help companies like ours, in order to make it easier for sheltered workshops to take away our business opportunities under the Javitts-Wagner-O'Day Act.

Fortunately, our company still receives a few Federal contracts; however, if H.R. 3866 is enacted, in its present form, even that remaining business will be in jeopardy. That will happen because, as I understand H.R. 3866, it will allow workshops easily to convert excessive awards under the bill to exclusive and permanent Javitts-Wagner-O'Day assignments.

I appreciate the opportunity to appear here today, and I hope that the committee will give careful consideration to the serious problems raised by the legislation before you. Thank you.

[Mr. Bremner's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF LOCKLEY BREMNER, VICE PRESIDENT, BLACKFEET INDIAN WRITING CO., INC., BROWNING, MT

The Blackfeet Indian Writing Company, Inc.
Blackfeet Industrial Park • Browning, Montana 59417 • (406) 338-2921

House of Representatives
Committee on Small Business
Room 2361
Rayburn House Office Building
Washington, D.C. 52147

Sir:

Please find enclosed the Blackfeet Indian Writing Company's (BIWC) statement on the negative impact of HR3866 and the past difficulties imposed on BIWC by the Javitts, Wagner, O'Day Act.

We look forward to your review and consideration of BIWC and the Blackfeet Indian Nation's interests. If you have questions or desire additional information, please contact Company President, Joe McKay or myself at (406)338-2921.

Thank You.

Sincerely,

Lockley C. Bremner

Lockley C. Bremner
Vice President Sales

LCB/pc
blft3:71

National Sales Office 121 Spencer Place • P. O. Box AB • Mamaroneck, New York 10543 • Telephone (914) 698-2022 • Telex 646903 • Cable PENS

TABLE OF CONTENTS

Part I Article, "We Want Your Business, Not Help"

Part II Background data on Blackfeet Reservation

Part III Blackfeet Indian Writing Company (BIWC) and National Industries for the Blind (NIB) Chronological History

Part IV Blackfeet Statement on the impact of HR3866

Supplement #1 UIDA Business Survey Report

Supplement #2 BIWC Sales Government Agencies FY1986

Supplement #3 Cambridge Marketing Goup Inc. Survey

Supplement #4 Letter from Blackfeet Developmentally Disabled Program

THE ENTREPRENEURS

"We Want Your Business, Not Help"

THE BLACKFEET INDIANS are in the pencil business, but it's not a roadside operation flagging down tourists traveling along U.S. 2 through their Montana reservation to the east entrance of Glacier National Park.

Chief Earl Old Person is the entrepreneurial force behind the tribe's Blackfeet Indian Writing Company. The chief, 51, crisscrosses the nation promoting the success of the tribe's pen and pencil making factory in Browning, largest town on the reservation.

The chief's prime targets are corporate purchasing agents, and his message is plain: "We don't want help, we want your business." This year he expects $6 million in sales and more customers turning to his tribe for their writing needs. While this sales level is less than 1 percent of total industry annual sales of $650 million, it is the major economic factor on the reservation.

Pen and pencil making is the Indians' way of pulling themselves up by their own moccasin thongs. The story behind this industrial outpost on the tribe's 1.5 million-acre reservation adjoining Canada started with people, "the 6,200 Indians who live on the reservation," says the chief. "The tribe has oil and gas resources, but unemployment is chronic—up to 70 percent in the winter—and full-time career jobs are pitifully few."

Chief Old Person, whose education was limited to correspondence courses and "a degree from Experience University," says his people are the product. "We are trying to market their skills and attract other businesses to the reservation as well as expand the pencil factory. Education is the key to achieving a viable economy on the reservation."

Born and raised in a reservation village not far from Browning, the chief was elected to the tribal council—the Blackfeet's governing body—in 1954, at which time he patiently began learning the ways of white business and building a foundation for industrial endeavors. "Most of our people, including the tribal elders, spoke little or no English," he says. "My first job was to act as interpreter for my people in their dealings with the government."

Before the pencil factory, firefighting, lumbering and ranching offered

Chief Earl Old Person has no reservations about the benefits of private enterprise.

the Indians seasonal wages, the chief recalls. But this was not enough to break the destructive cycle of unemployment and welfare. "The only way out of the dilemma was to demonstrate that the principles of American free enterprise work for Indians as well as for others."

Why pencils? There are 17 makers of wood-cased pencils and more than 2,000 pen and marker manufacturers in the high-volume, low-unit-cost industry. Not exactly a wide-open market, but the work is labor-intensive—11 operations are required in pencil making—and a labor force was available. The idea came from a brainstorming session of consultants hired by the Small Business Administration for its Section 406 program, which provided technical assistance to areas of chronic unemployment.

"I had been to many trade and industrial shows over the years to show what the Blackfeet had to offer businesses," says the chief. "My idea was to establish an industrial park in Browning to attract light industry and provide an employment base for our people."

The SBA's consultants developed a business plan, and Peter Tracy, a New York venture capitalist, came up with financing. With $200,000 in equity capital, the Blackfeet put up a 40,000-square-foot Butler building in 1971, filled it with leased machinery and started in business with an untrained labor force unaccustomed to a time clock.

Through the early 1970s, the stripling company had its ups and downs—"more of the latter than the former," says Tracy, who became president in 1975. "The chief talked us through several close brushes with bankruptcy." But the firm, which employs about 100, has been profitable for the past five years and has just begun importing and marketing an erasable marker pen made in France.

The tribe owns 65 percent of the company's stock, 17 percent is owned by American Indian Investment Opportunities, a minority enterprise small business investment corporation, and the rest is held by private investors. Through a national sales force headquartered in Mamaroneck, N.Y., and headed by Tracy, the 300,000 pencils, 100,000 ballpoint pens and 60,000 markers that the factory produces each day are sold to office supply dealers in all 50 states.

Meanwhile, Chief Old Person is scouting for other businesses to join the Blackfeet Indian Writing Company at Browning. He and the council leaders are looking at the oil and gas reserves on the reservation. "We would like to develop our own resources," says the chief. "Sink the wells ourselves and pump the oil and gas, instead of just being paid royalties." □

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SECTION I. BACKGROUND DATA ON BLACKFEET RESERVATION

A. Geography/Climate:

The Blackfeet Reservation is located in North Central Montana and occupies an area of about 1,500,000 acres. Most of the reservation is in Glacier County, but a small part is in Pondera County. It is bounded on the west by Glacier National Park, on the south by Birch Creek, on the east by Birch and Cut Bank Creeks, and the north by Canada. The general topography is a rolling plain rising westward to the Continental Divide. The average elevation range from 3,800 to 5,000 feet, excluding high mountain peaks.

Winters on the reservation are long and cold and the summers short and cool. Extreme temperature changes occur frequently within any twenty-four hour period. Temperatures in the winter average 24 degrees Fahrenheit but may go as low as 50 degress below zero. Summer temperatures range into the 80's but may rapidly fluctuate during sudden storms. The mean July temperature is around 62 degrees fahrenheit.

The earliest frost is likely to occur in September and the latest in May. Average rainfall ranges from 32 inches in the west to 11 inches in the eastern edge of the reservation. The reservation area is subject to persistent southwesterly winds, which can attain velocities up to 90 miles per hour.

Browning is the seat of tribal government as well as the major trade center for the reservation. Cut Bank, the county seat of Glacier County, serves the eastern edge of the reservation. Great Falls is the nearest major shopping center; Kalispell, 100 miles to the west; Havre, 160 miles to the east, also serve the reservation to a lesser extent. Cardston, Alberta, Canada, 15 miles north of the reservation, serves the northwestern part. The principal villages and settlements on the reservation besides Browning are: East Glacier, Babb, St. Mary's, Blackfoot, Starr School and Heart Butte.

B. Transportation:

Two major highways, U.S. 2 and U.S. 89, traverse the reservation, both roads serve Glacier National Park. Daily round trip bus schedules are available between Browning and Great Falls. The main line of the Burlington Northern Amtrak Railroad serves the reservation and daily passenger train service is available to Seattle and Minneapolis. Trains may be boarded at Cut Bank and East Glacier. The nearest commercial airport, located at Great Falls, 126 miles southeast of Browning, is served by Frontier, Northwest, Western and Contenental Airlines.

C. Area Demographics

There are nearly 13,000 enrolled members of the Blackfeet Tribe of that total 6,098 or approximately half, live on the reservation there are approximately 2,500 non-Indians living on the reservation for a total reservation population of 8,598.

BLACKFEET POPULATION * BY
AGE GROUP AND SEX

	TOTAL	MALE	FEMALE
Under 5	811	403	408
5 to 14	1,903	946	957
15 to 24	1,128	561	567
25 to 34	671	334	337
35 to 44	549	273	276
45 to 54	433	215	218
55 to 64	305	152	153
65 +	295	148	150
TOTAL	6,098	3,032	3,066

*Population is based on 1970-1978 vital events and immigration data calculated by IHS Headquarters, November 1980.

Population distribution by areas on the Blackfeet Reservation.

Browning	4,530
Heart Butte Area	581
Babb	302
Rural Browning	685
Total FY81 Reservation Population	6,098

D. Employment & Economy

1. Economy

The Blackfeet Reservation has a growing population. This population while growing slowly, contributes to the socio-economic ills of the area. Unemployment is a constant problem and this in turn results in low incomes, substandard housing, poor health, and a generally lower standard of living. Much of this human resource is not adequately trained nor experienced to be attractive to potential industrial development prospects.

Petroleum has been the primary income producer of the area mineral resources. Other minerals include coal, titaniferous magnetite and sand and gravel. The titaniferous magnetite does show some possibility for development although it will not be in the immediate future.

Capital and entrepreneurship is lacking to bring about locally sponsored industrial development over much of the reservation. Several outside firms have shown some interest on the reservation but at the present time, very little locally produced raw materials go into industrial processes.

The recreation and tourism potential does show promise. The Blackfeet Reservation itself holds some tourist interest. The location of the reservation next to both United States and Canadian National Parks and near wilderness areas and historic trails add to the potential for tourism. The most serious drawback to this type of development is the relatively short summer tourist season and the winter potential is hampered by the prospect of some severe storms and wind. The type of jobs created by tourism because of their seasonality contribute to the underemployment of the area and consequently to families with low annual incomes.

The agricultural resources have been a primary source of income over the years. There are possibilities through irrigation and range management improvements to increase the agricultural income for the area and particularly the Blackfeet Reservation. However, this is not likely to bring many full-time jobs. Livestock feeding has the potential to make the agricultural resource contribute more to the overall economy.

The water resources of the reservation are substantial. It is important that the Indian right to this water be established so water will be available for domestic use as the population increases, for irrigation as the agricultural resources are developed, for use in industry as it becomes feasible to use the coal and titaniferous magnetite, for recreational uses as the tourism

and recreation potential is utilized, and for use in the processing of any other natural resource that is discovered as well as the secondary recovery process in the petroleum industry.

2. Employment

Occupation Types

Agricultural occupations employ by far the largest percentage of Blackfeet people; however, this percentage has been on the general decline as shown by the census data. In 1960, 40.2% of the Blackfeet labor force were involved in agriculture, while the 1972 figures show this was reduced to 33%. This represents the trend toward larger farm units and movement of peoples to urban areas that is common throughout the country. Another occupational pursuit that shows a change in trends from 1960 to 1970 is public administration. Large numbers of Blackfeet people are employed under programs provided by the Tribe and the BIA. In 1970 approximately 14% of the Indian labor force were involved in that occupation while the surrounding counties showed an average employment percentage of approximately 7% in public administration. Between the two employment fields of agriculture and public administration 47% of the Blackfeet labor force is employed. It is evident that the proportion of employment within these fields must decrease to provide a stable economy for the Blackfeet Tribe.

The largest single deficiency in employment opportunities for any certain occupational type occurs within the field on wholesale and retail trades on the reservation. In 1972 only 12.3% of the labor force were involved in this activity. In Glacier County and nearby Pondera, Toole and Teton Counties, the percentages of the labor force employed within this occupation range from a low of 22% to a high of 29%. These statistics point out that to achieve balanced job opportunities as a stated objective of the plan, employment potential must be developed within the wholesale and retail trades and recreation. The following chart indicates the number of Blackfeet people employed by occupational types.

Present Blackfeet Reservation
Employment Trends

Industry Group	Employment 1980	Percent Employed
Agriculture	434	30.4%
Mining	11	0.8%
Construction	70	4.9%
Manufacturing	73	5.1%
Trans. Comm. Utilit.	47	3.3%
Whole & Retail Sales	198	13.9%
Financial, Ins. R. E.	29	3.0%
Bus. & Rep. Services	23	1.6%
Personal Services	97	6.8%
Entertain, Recreat.	30	2.1%
Professional	186	13.1%
Public Admin.	170	11.9%
Forestry	59	4.1%
Total	1,427	100.0%

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2. Potential Indian Labor Force

Total Available	total	Male	Female
For Work	3,566	1,833	1,733
Employed	1,682	853	829
Umemployed	1,844	980	904

These statistics show that a 52.8% umemployment rate exists on the Blackfeet Reservation.(3)

(a) Estimation of Yearly Family Income(4)

Income Category	No. per Category	Percentage
$0 - 2,999	81	24.0%
$3,000 - 5,999	33	10.0%
$6,000 - 8,999	43	13.0%
$9,000 - 11,999	44	14.0%
$12,000 - 14,999	24	8.0%
$15,000 - 17,999	12	4.0%
$18,000 - or more	28	9.0%
Do Not Know	36	11.0%

Based on CETA eligibility requirments of $10,300 for a family of four (4), approximately 47% to 50% of the Blackfeet population are below the poverty level.

(3)U.S. Department Interior, Bureau of Indian Affairs Annual Report on labor force, December 1982.

(4)Blackfeet Community College Planning Survey, 1981

E. Description of Blackfeet Tribal Government Organizational Structure

Pursuant to the authority of section 16 of the Act of June 16, 1934, the Blackfeet Tribe adopted its Constitution and By-Laws for the government, protection and common welfare of the Blackfeet Tribe and members thereof.

The governing body of the Blackfeet Tribe consists of nine (9) individuals who are elected to the Blackfeet Tribal Business Council. Members fof the council are elected from four (4) Districts of the Blackfeet Indian Reservation: Browning District, Heart Butte District, Seville District and Old Agency District. The Members are elected for a term to two years by the eligible voters of the Blackfeet Tribe. A Primary Election for tribal council membership is held on the first Thursday in June of even numbered years, and the two candidates receiving the largest and second largest number of votes for each of the positions, above referred to, are certified as to their nominations as candidates for the General Election, which is held on the last Tuesday in June of even numbered years. The candidate receiving the largest number of votes for each position is certified by the Blackfeet Election Board to the Blackfeet Tribal Business Council as having being elected to the position sought.

The Blackfeet Tribal Business Council is responsible for the overall social, economic and natural resource development of the Blackfeet Reservation and for the members of the Blackfeet Tribe. It is the responsibility of the Tribal Business Council to become involved in the vast number of tribal and tribally-sponsored program of the Blackfeet Tribe. The powers of the Council are more specifically set out in the Blackfeet Tribal Constitution and By-Laws attached as an appendice.

The administration functions of the Tribal Business Council is the responsibility of the Executive Committee which is composed of the Chairman, Vice-chairman and Secretary. The Tribal Treasurer serves as the Ex-Officio member of the Executive Committee. The Blackfeet Tribal Business Council selects and appoints Councilmen to various tribal committees that are established by the Council for all tribal functions and programs in accordance with Article IV, Section 1, part (r) of the Blackfeet Tribal Constitution and By-Laws.

A regular Blackfeet Tribal Business Council meetings is called on the first Thursday of each month and special meetings are called by the Chairman of the Council at such times as are deemed necessary. Meetings are held at tribal headquarters in Browning, Montana. Regular Council meetings are open to the public. A quorum of Tribal Council consists of six (6) members or two-thirds of the entire elected membership.

All significant financial transactions, as well as enactments of important concerns to the Tribe, are written by resolution. All approved resolutions are signed by the Chairman and Secretary of the Tribal Council and transmitted to the Agency Superintendent for approval. Remaining business matters may be determined by motion. Minutes of each meeting of the Council are submitted at each regular meeting for approval by the Council. All decisions are made by a majority vote of the Council at which a quorum must be persent; with the exception that two-thirds (2/3) vote of the entire Tribal Business Council is necessary to rescind any former action of the Tribal Council. In addition to the duties provided for in the Tribal Constitution and By-Laws the Tribal Business Council is responsible for the following duties also: Tribal budgets, Tribal property, conduct of council members and employees in the management of Tribal business.

The management of tribal business is vested in the Blackfeet Tribal Business Council and all actions of the Council, properly taken in accordance with the Tribal Constitution, are binding upon all officials and employees.

All Tribal Councilman receive a salary in accordance with responsibilities and duties. The salary is set by the members of the Council in general council session. The Chairman, Vice-chairman and secretary are compensated over and above the base salary which is determined by the Tribal Council.

No member of the council can be an employee of the Blackfeet Tribe while holding a council member position.

Tribal Advisory Committee are established by Tribal Resolution, in accordance with the constitution and By-Laws and functions for the purpose of efficiency of operations and for the planning of the social, economic and natural resource development of the Blackfeet Indian Reservation. The Blackfeet Tribal Business Council maintains complete authority over all committees that are established.

The attached memorandum from the office of the Inspector General gives an objective view of the tribal management systems stability and capabilities.

The Blackfeet Tribal Government has a firmly established record of performance and success in manageing federal grants and assisting in the development of private sector ventures.

The following private sector ventures have been assisted by Tribal investments:

Chewing Blackbones Campgrounds

A full service campground including a campstore, cafe and marina on St. Mary's lake, the entrance to Glacier National Park.

Red Eagle Campground

An overnight camping facility on Two Medicine lake.

Duck Lake Campground

A full service facility on an Alpine lake famous for its fishing.

The Blackfeet Writing Company

A manufacturing concern, whose production plant is located at the Blackfeet Industrial Park. A growing manufacture of pens and pencils. With a recent additional investment the Blackfeet Tribal Government assured continued expansion, by purchasing the Lindy Pen Company.

Post & Pole Mill

The investment of Tribal Government funds for equipment provided a new business starting up this year.

It has been a high priority of the Tribe to make the Livestock Producers a successful business to provide the needed employment and economic advantages to area ranchers.

BIWC-NIB Chronological Relationship

1971 Blackfeet Indian Tribe and SBA develop business plan to manufacture pencils on the Blackfeet Indian Reservation.

1971 Venture capitalists raise $200,000 in equity capital. Blackfeet Tribe constructs a 40,000 sq. ft. building and leases machinery to begin manufacturing with an unskilled and untrained labor force.

1971 US Government through SBA awards primary contract to BIWC for 60 percent of all general writing and drawing pencils.

1972 Total BIWC sales $777,000 total sales to government $630,000.

1973 Total BIWC sales $1,100,000 total sales to government $440,000.

1974 US Government through Javitt, Wagner, O'Day Act awards all general writing implement business to the National Industries for the Blind.

1974 Through 1980 NIB subcontracts manufacturing of blank pencils to BIWC. Total dollar amount nears $900,000 annually in 1980.

1981 NIB acquires ability to manufacture blank pencils. BIWC looses nearly one million dollars in annual sales, BIWC attempts other subcontract business, reject by NIB.

1983 NIB awarded set aside for thin lead pencils, taken from BIWC which accounts for nearly $100,000 in business. This set aside opposed by Pencils Makers of America (PMA)

1984 NIB rejects several BIWC offers to subcontract (See UIDA Business Survey Report on impact of government and NIB sales)

Blackfeet Indian Writing Company's Statement on HR3866

The Blackfeet Indian Writing Company supports the Javitts, Wagner, O'Day Act in principle, understanding the social and economic hardships imposed upon minority and handicapped groups. However it is hard for the Blackfeet people to understand the federal government's policy to displace one disadvantaged group in favor of another. Therefore the Blackfeet Indian Writing Company opposes any program that is a 100 percent non-competitive set aside that will adversely affect any other minority or disadvantaged group. HR3866 will again give favorable position to the National Industries for the Blind (NIB) and will limit the BIWC's opportunity to sell to the federal government.

The Blackfeet Indian People through BIWC has suffered severe financial set backs due to the Javitts, Wagner, O'Day Act and will suffer if further limits are placed on our opportunity to sell to the federal government. (See Part II Chronology) The BIWC is a minority business with majority of shares owned by the Blackfeet Tribe and the 12,000 tribal members. BIWC provides meaningful employment to tribal members in a severely economically depressed area. It has been necessary for BIWC to overcome many adverse conditions to become a viable player in the writing implement industry.

1. geographic isolation
2. adverse weather conditions
3. untrained, unskilled workforce
4. market resistance and prejudice
5. misconceptions
6. adverse legislation limiting BIWC's opportunity to sell to the Federal Government.

BIWC was conceived in 1971 through the efforts of the Blackfeet Tribe, SBA and private venture capital. The initial sales base was a 50% set aside to manufacture general writing pencils for the federal government. Sales for the first two years were $1,877,000 of which 90 percent or $1,700,000 was to the government. In 1974 the NIB received a 100% set aside through the Javitts, Wagner, O'Day Act for most general writing implements. This displacement of BIWC business brought the company near bankruptcy. A subcontract from NIB to BIWC to produce pencils blanks partially offset the loss in sales. By 1980 BIWC was producing nearly one million in annual sales of pencil blanks to NIB. However, in 1981 NIB acquired the ability to produce it's own pencil blanks. This loss in sales resulted in severe financial stress to the company. (See UIDA Supplement) BIWC has never fully recovered from this loss in sales and has been rejected by NIB in several attempts to subcontract. HR3866 is viewed by BIWC as an attempt to circumvent necessary procedures

to obtain further set aside business from the government. BIWC sales to the federal government in FY1986 was $170,000 or 3% of BIWC's sales. Anticipated government sales in FY1987 to reach $250,000. HR3866 could possibly result in further losses of sales and consequently employment on the Blackfeet Reservation. BIWC is a small business with sales of less than five million dollars. Any further erosion of business could result in loss of employment and BIWC's ability to grow.

NIB is not a small business with sales in the area of $280 million annually. BIWC has not only experienced losses of sales to NIB at the government but has also encountered them in the open market. This puts BIWC at a competitive disadvantage because of NIB's built in margins from government sales.

BIWC is happy that the NIB has been given an opportunity to participte in selling to the same American marketplace. BIWC is a participant in employing the Developmentally Disabled on our reservation. (See Blackfeet D.D. Supplement) All we are asking for is a fair opportunity to participate in selling to the same American market which includes the billions of dollars purchased by the federal government, DOD and federal agencies. The Blackfeet people are also a socially, economically and geographically depressed people. Our company provides these people with meaningful jobs and the opportunity to participate in mainstream America.

We urge every member of congress to consider the impact of their decision on other small business and minority groups. I am sure you will reconcile past injustices while making the best decision for all concerns. Thank you for the honor of standing before this committee and blessings from the Blackfeet Indian Nation.

Supplement #1

UIDA Business Survey Report
prepared for the Bureau of Indian Affairs
May 23, 1985

The major external events causing the difficulties include:

1. The loss of the GSA contract to the NIB.
2. The recession in the U.S. economy.
3. Competitors upgrading their plants to more automated operations and lowering the sales price.
4. The general change in attitude by corporate buyers form the position of "Buy from minority-owner companies" to "Buy at the most attractive price."
5. The convenience for the corporate buyer to purchase from a stationer who will distribute to local offices without putting the burden for routing on corporate headquarters.
6. The introduction of automated office equipment such as word processors.
7. The introduction of high-quality inexpensive mechanical pencils by foreign manfacturers.

The internal situations:

1. The difficulty in changing the injection molding supplier which resulted in the ruin of the company's molds.
2. The inability to ship complete orders in a timely manner.
3. The obsolete design of some products, i.e. the retractable point pen.

The GSA contract was lost in two stages. First, in 1974 when the Industries for the Blind took the contract. Second, when the NIB stopped purchasing from the company in 1981.

The recession in the U.S. changed the attitudes of corporate buyer. Price became <u>all</u> important, and distribution costs became more significant than before.

The competition, especially Faber Castell, has upgraded their manufacturing facilities and are selling pencils at greatly reduced prices. In some cases, they sell on bid-type sales at prices only 20% above BIWC's direct cost, thus not allowing BIWC to match the price without losing.

Supplement #2

BIWC SALES TO GOVERNMENT AGENCIES
FY1986

	Y-T-D 85/86
Accounting and Finance	$10,388.08
DAFC	23,739.80
General Service Administration	13,663.20
General Service Administration	4,035.60
Indian Health Service	2,217.76
NASA Langley Res.	390.60
Naval Supply	2,095.39
Procurement & Supply DOD	1,167.46
Supply Officer	4,109.05
U.S. DOD	87,287.59
V.A. Medical	10,327.79
Total	$170,548.03

Supplement #3

CAMBRIDGE MARKETING GROUP INC. SURVEY

BREAKDOWN OF ANTICIPATED SALES 1972-1976

	Year 1	Year 2	Year 3	Year 4	Year 5
Package Goods	0	800 M	1,225 M	1,550 M	1,800 M
Bid	0	50 M	250 M	300 M	350 M
Ad Specialty	25 M	100 M	250 M	400 M	500 M
Commercial	435 M	1,000 M	1,300 M	1,500 M	3,000 M
Mail Order	25 M	50 M	100 M	150 M	200 M
New Products	0	0	350 M	500 M	1,000 M
College Bookstore	15 M	25 M	75 M	100 M	250 M
Total	500 M	2,025M	3,450 M	4,500 M	7,100 M
Government Lead-in	250 M	500 M*	500 M*	500 M*	500 M*
Grand Total	750 M	2,525 M	3,950 M	5,000 M	7,600 M
Sales Personnel	4	7	15	20	25

*Secured on a competitive bid basis

Blackfeet D. D. Program, Inc.
P. O. BOX 247 · BROWNING, MONTANA 59417

May 29, 1986

Blackfeet Indian Writing Company
Browning, Montana 59417

Dear Sirs:

The Dusty Bull Training Center is proud to be associated with the Blackfeet Indian Writing Company.

One of the main goals of our program is normalization for our developmentally disabled citizens. In our small community the opportunities are very limited for providing our developmentally disabled population employment in a normal work setting.

The areas within the writing company that were identified in our meeting will provide excellent job training and eventually permanent employment for several of our clients. The piece-work in pen assembly and blister pack will give the remainder of our clients valuable work experience.

Again, we are proud to be able to work with your company in giving our developmentally disabled clients a chance to work in a normal setting and become independent.

Very Truly Yours

Blackfeet D.D. Program, Inc.

Zita R. Bremner
Director

Mr. MITCHELL. Thank you, sir. I swore to the staff that I was going to contain myself this morning, but don't these agencies ever talk to each other? I just don't understand this, how one agency that is supposed to be helping small business, SBA, and another agency apparently makes almost a unilateral and opposite decision—I am not saying it is right or wrong—but at least there ought to be some consultation.

I have concern on the pencil contract. When part of that went over to the sheltered workshop, was that a sheltered workshop such as Ms. Peterson referred to, where they slow down production?

Mr. BREMNER. The contracts went to her workshop.

Mr. MITCHELL. According to her testimony, they had slowdowns in production.

All I want to say is somebody better start talking to somebody in Government. We can't have this kind of foolishness going on.

Mr. Offenhartz.

TESTIMONY OF HARRY OFFENHARTZ, FRAASS SURVIVAL SYSTEMS, INC., BRONX, NY, ACCOMPANIED BY COLIN OFFENHARTZ

Mr. HARRY OFFENHARTZ. Mr. Chairman and members of the committee, thank you for the opportunity to appear before you to express my deep concern and my opposition to H.R. 3866. My name is Harry Offenhartz. I am associated with my son, Colin, in the operation of Fraass Survival Systems, Inc., a manufacturer of items used by the military to treat wounded or injured servicemen. We are a small, family owned business which I started in 1949. We are located in a distressed and depressed area of the Bronx in New York. Permit me to tell you how the Government's program of exclusive procurement from handicapped workshops has already hurt us and how this bill could have devastating effects on us.

In previous years, we were the successful low bidder for a sewing kit, a crewman's relief kit, and a camouflaged triangular bandage. These items have now disappeared from competitive bidding. They are now awarded exclusively to blind and handicapped workshops. The loss of the camouflaged triangular bandage alone resulted in approximately $1 million in lost sales, about one-third of our total revenue at that time.

In addition, we have learned that workshops have requested to be assigned the exclusive production of five additional Fraass products which make up an additional 40 to 50 percent of our total current revenues.

Something I heard today surprised me, that workshops receive only $10 million in Federal contracts over 3 years. As a matter of fact, workshops receive over $267 million each year exclusive JWOD contracts, that is fact, and I am sure your counsel can find that in the records.

All of our employees are hired from unemployment rolls. A great many have never been employed before and practically all of them are either black or Hispanic. We train them at a considerable expense and always pay them at least minimum wages, even while they are being trained.

If H.R. 3866 is enacted in its present form, I sincerely believe that we would be driven out of business. Needless to say, approximately 200 of our union employees who are black and Hispanic would be thrown out of work and would have to go back to the unemployment ranks and probably go back to public relief where we got them from and we are glad that we did that.

They are good workers and I think the world should know when you train people who never had a job before and give them an opportunity, they become good useful workers and deserve the salary they get.

I know of no one who is not concerned with the problems of the blind and handicapped. Surely I am, and the record of our company indicates that it is also. But to thrust sheltered workshops into a position of competitive advantage against the economically handicapped is cruel and unjust.

Our employees have built up hope for permanent jobs and a chance to get out of their ghettos.

With enactment of this bill, all of our employees would lose their jobs. We have in our company mothers and daughters, family after family working, never layoffs or at least a very minimum amount of layoffs and here they would all be thrown out of work. Where would they go?

I think under that condition, cruel is not too strong a word.

Under this bill, first and foremost, a workshop could buy in, that is, intentionally underbid on a small business set-aside contract and then, through the Wagner-O'Day Act automatically have the item assigned to it with a perpetual monopoly on its production for the Government thereafter.

Firms such as ours would no longer be able even to bid on the item, let alone receive an award, even though we are in a distressed area and employ minorities and employ handicapped, which we do. We would not be allowed to bid. It is all set aside permanently under the conversion.

One might raise the question of how a workshop could buy-in a contract. Once a contract is converted through the Wagner-O'Day Act—and this bill permits that to happen—the workshop receives at least a 5-percent increase over the last contract award. In addition, it will receive semiannual adjustments forever thereafter. That is how they can buy in, because they make up their loss through the upward increases that they get.

Finally, I would submit that this bill might not even help the blind and handicapped. There is no provision in H.R. 3866 which would require that handicapped persons perform the direct labor required under the contract. Thus, workshops could subcontract substantial amounts of direct labor or even the entire contract to for-profit firms that do not have handicapped workers, are not located in distressed areas, and do not employ minorities. They can just subcontract the entire contract to anyone they darn please.

On the other hand, our firm has always subcontracted from its very inception to workshops wherever it was found that they could perform. This was a personal commitment of mine. Our records, of course, will prove this. Moreover, in our shop we employ the physically handicapped persons as well as the minorities.

Last, I would like to call your attention to the Industrial Preparedness Planning Program of which we are a part. That program insures that there are companies available to produce critical items at times of national emergency or defense mobilization.

Fraass, our company, signed a contract under that program to become a planned producer, which requires us to be ready to produce on short notice for surge and mobilization demands and be ready, willing, and able to operate for periods of 24-hour days for several weeks at a time under these emergencies.

If this bill is enacted and our products assigned for exclusive workshop production, we would be compelled to drop out of this program. We would be out of business.

The same results would occur, of course, to other current planned producers thus reducing the industrial base needed for the Nation's defense. There is very little more I can add to that excepting in my particular case I have devoted my entire life to working in the black and minority community to give jobs to people, young people who never had jobs before and to see this program that I have worked all my life for destroyed—well, thank you very much for listening to me.

Mr. MITCHELL. Thank you.

Mr. Bremner, did you quote a figure as to the dollar loss that your company incurred to the workshops?

Mr. BREMNER. In 1974, we lost roughly $440,000. In 1981 when we lost the subcontract to National Industries for the Blind, it was close to $1 million at that time. In 1973, we lost a $100,000-contract for thin lead pencils—1983, I'm sorry.

Mr. MITCHELL. So you are talking roughly $1.5 million?

Mr. BREMNER. Those are just specific years, but if you totaled it, it could be over $10 million.

Mr. MITCHELL. Mr. Schapiro, did you ever complain to the Committee for Purchase from the Blind and Other Severely Handicapped about the adverse impact?

Mr. SCHAPIRO. Several years ago we had meetings with various committees for the handicapped that purchase—Mr. Fletcher, I believe, was the head of it at that time. We visited Senators and Congressmen, had a meeting at the headquarters of Goodwill Industries in Washington to try to work out some arrangement where we could work together instead of competing, but were not successful and many of our companies are very much threatened.

Mr. MITCHELL. Mr. Offenhartz, have you made a similar complaint?

Mr. HARRY OFFENHARTZ. We didn't even know that the items were taken away from us. We just thought they weren't buying any more until I read it in the Federal Register.

Mr. COLIN OFFENHARTZ. We have currently five or six items that the committee has asked for. That would put us out if they have them. We did not know 7 years ago, we lost $1 million, we didn't know anything about it. It just disappeared one day from the list. We have only recently found out that you can complain, but our counsel has complained at the committee and he has not been very successful.

Mr. MITCHELL. No. 1, I have total sympathy for the handicapped and the blind. I think my life's work has demonstrated that. And

No. 2, I am a chairman who does not believe in delaying legislation.

No. 3, in this case, I think there is a great deal more staff work that has to be done before I want to take this to the full committee. We can't have a situation where the actions of Congress help one group but essentially hurt another.

I would not like to proceed with this legislation until I am reasonably assured that at least there is a mechanism for consultation involving all the agencies that are affected.

We have worked very hard on distressed areas legislation and I think we need to look at that legislation in addition to other things.

Finally, I made a statement earlier and I reiterate it: I will not proceed to move this legislation to the full committee until such a time as we have developed a definitive definition of what severe economic hardship is. I just think that will be totally unwise to do so. I hope that that definition can be worked out very quickly.

You heard me ask SBA to do that, but absent that, I can see just chaos taking place.

Gentlemen, thank you very much. That concludes our hearings for the day. Thank you very much for your participation and your testimony.

[Whereupon, at 12:15 p.m., the subcommittee adjourned to reconvene subject to call of the Chair.]

APPENDIX

APPENDIX A.—H.R. 3866

99TH CONGRESS
1ST SESSION

H. R. 3866

Providing permanent authority to allow not-for-profit organizations operated in the interest of handicapped individuals to receive procurement grants and contracts under the Small Business Act.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 1985

Mr. MRAZEK introduced the following bill; which was referred to the Committee on Small Business

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A BILL

Providing permanent authority to allow not-for-profit organizations operated in the interest of handicapped individuals to receive procurement grants and contracts under the Small Business Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELIGIBILITY FOR CERTAIN NONPROFIT ORGANIZATIONS TO RECEIVE PROCUREMENT GRANTS AND CONTRACTS.

(a) AMENDMENT TO SMALL BUSINESS ACT.—Section 15(c) of the Small Business Act (15 U.S.C. 644(c)) is amended to read as follows:

"(c)(1) During any fiscal year, public and private not-for-profit organizations eligible for assistance under section 7(h) shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed $100,000,000 during any such year.

"(2) The Administrator shall—

"(A) monitor and evaluate such participation; and

"(B) in any case described in paragraph (3), require each agency and department having procurement powers to take such action as the Administrator and the Executive Director of the Committee for the Purchase from the Blind and Severely Handicapped deem appropriate to alleviate the economic injury sustained, or likely to be sustained, by for-profit small business concerns.

"(3) The requirement under paragraph (2) shall apply in any case in which the Administrator and the Executive Director find that the participation of such organizations has caused or may cause severe economic injury to for-profit small business concerns.".

(b) REPORT.—The Small Business Administration shall prepare a report describing the impact that contracts and grants awarded under section 15(c) of the Small Business Act (15 U.S.C. 644(c)) have on for-profit small business concerns. Such report shall be transmitted to the Senate Committee on

Small Business and the Committee on Small Business of the House of Representatives not later than 12 months after the date of the enactment of this Act.

○

APPENDIX B.—STATEMENT FROM GEORGE J. MERTZ, PRESIDENT, NATIONAL INDUSTRIES FOR THE BLIND

NATIONAL INDUSTRIES FOR THE BLIND
524 Hamburg Turnpike, Wayne, New Jersey 07470
Telephone (201) 595-9200

GEORGE J. MERTZ
President

June 20, 1986

The Honorable Parren J. Mitchell
Chairman
House Small Business
Subcommittee on SBA and SBIC Authority,
Minority Enterprise and General
Small Business Problems
2361 Rayburn Office Building
Washington, DC 20515

Dear Congressman Mitchell:

On behalf of National Industries for the Blind (NIB), I am pleased to present written testimony to be included in the hearing record for H.R.3866.

National Industries for the Blind applauds your interest on behalf of blind and disabled Americans. As the central nonprofit agency designated through the Javits-Wagner-O'Day Act to represent workshops for the blind, NIB shares your concern in providing employment opportunities to blind, multihandicapped blind, and other severely handicapped persons.

Please feel free to contact NIB if you, the Subcommittee members, or staff have any questions concerning the enclosed testimony.

Sincerely,

George J. Mertz

George J. Mertz

GJM:ymn

Enclosure

National Industries for the Blind (NIB) is pleased to submit comments for the record regarding H.R.3866, a bill to provide that public and private not-for-profit workshops be eligible to participate in the small business set-aside program. NIB traditionally has not supported workshop participation in the small business set-aside program for a variety of reasons. This position is largely due to the limited participation of our associated agencies in the set-aside program and the potential for negative impact on the Javits-Wagner-O'Day (JWOD) Act program.

NIB is a private nonprofit organization which has been designated since 1938 as the central nonprofit agency (CNA) for qualified workshops for the blind which are eligible to participate in the program of the Javits-Wagner-O'Day Act (P.L. 92-28). As such, NIB has been directly involved in assisting workshops with their employment and service programs, as well as management functions, for 48 years. The NIB Certificate of Incorporation states that NIB exists to assist blind persons, in general, and blind workers, in particular.

NIB is, in some respects, an outgrowth of the workshops for the blind. In 1938, the workshops and other interested parties recognizing the need for a specialized organization which could provide technical assistance and related services, and also function as the designated central non-profit agency under the JWOD program, jointly formed NIB.

As the central nonprofit agency, one of NIB's primary functions is to equitably allocate purchase orders for Federal government items among qualified workshops for the blind and to assure that the products meet quality and delivery requirements. NIB is further responsible for ensuring that workshops meet the stringent qualifications for initial and continuing eligibility, including compliance with applicable Department of Labor rules and regulations. Technical assistance is provided to workshops in a broad range of management, manufacturing, and rehabilitation areas. Orientation and training programs are provided for blind workers, workshop staff and management, and agency board members. Financial assistance is also available to the workshops under NIB's financial grant programs.

UPWARD MOBILITY

The NIB associated workshops and their parent agencies have historically employed legally blind persons at all levels of employment. There are blind persons employed in executive, management, professional, technical, supervisory, and support positions, a significant percentage of whom have worked in direct labor at some point in their lives and have received opportunities for advancement.

The NIB Board of Directors has stressed the promotion of blind workers through the passage of a Board resolution on upward mobility (See attached) and by encouraging each associated workshop to designate a staff person who would identify and assist blind workers in their upward mobility and competitive placement efforts. The purpose of the JWOD program is to provide work opportunities for blind and severely disabled persons who are principally in direct labor jobs. The capable and more qualified blind person is able to seek employment in a competitive setting and generally does so.

Further, it is important to note that Section 503 of the Rehabilitation Act requires Federal contractors with contracts in excess of $2,500 to take affirmative action measures to employ and promote qualified disabled workers. As such, workshops are legally obliged to comply with the standard affirmative action procedures covering disabled persons in all government contracts over $2,500.

SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT

Much of the testimony presented by the panel of blind witnesses focused on wages paid to blind and sighted workers within the various workshops. When one considers the wages paid to blind

and other severely handicapped persons within all sheltered workshops, it is essential to consider that the majority of persons served in all workshops are mentally, emotionally, or developmentally disabled with a high degree of severity and multiple involvement. The behavioral patterns associated with these disabilities often result in lowered productivity. This does not mean that blind workers are summarily paid low wages. Section 14(c) of the Fair Labor Standards Act (FLSA) provides for the payment of wages less than the Federally mandated minimum wage to individuals only when productivity is impaired or limited because of the individual's handicap. The Department of Labor (DOL), along with NIB and the Committee for Purchase from the Blind and Other Severely Handicapped, closely monitors the wages paid in workshops to ensure that they are commensurate with wages paid by regular industry in the vicinity for the same or similar work. DOL Wage and Hour regulations require that a handicapped person be paid the applicable certificate rate or at a rate based on his or her level of productivity, whichever results in the higher wage. Thus, the individual blind worker is guaranteed a degree of wage protection.

Regular program exemption certificates from the DOL do not allow for wages less than 50 percent of the Federal minimum wage. Individual rates between 25 and 50 percent of the Federal minimum wage can only be approved by the DOL with the written consent of the state Vocational Rehabilitation Agency

to justify the lowered wage. Additional exemptions can be obtained from DOL for evaluation, training, and work activities center programs. Evaluation and training certificates are time limited, while work activities center certificates are restricted for the most severely disabled individuals whose "productive capacity is inconsequential." Workshops must document all time studies, commensurate wages, individual production, wage payments, and disability. These records must be available for audit by the Department of Labor.

It is important to note that many agencies associated with NIB subsidize the wages of blind workers over and above what they have earned through their own productivity. History has shown that a workshops's participation in the JWOD program has resulted in improved wages and fringe benefits for blind workers.

We do not believe that the intent of Congress in legislating Section 14(c) of the Fair Labor Standards Act was to systematically pay blind workers less than sighted workers. On the contrary, NIB feels that the Congressional goal was to ensure viable employment opportunities for certain blind, multihandicapped blind, and other severely disabled persons, rather than precluding employment due to low productivity or the inability of the employer to subsidize the earnings of low producers. Compliance with Section 14(c) of the FLSA does not

diminish a workshop's responsibility to meet labor standards. Rather, the workshop must abide by the same labor regulations as those affecting the competitive sector, as well as meeting the requirements of Section 14(c).

Sheltered workshops associated with NIB operate in order to provide employment opportunities for those blind persons who traditionally have been excluded from the competitive labor market. Their exclusion from the competitive sector has largely occurred because of the severity of their disability, limited education, or factors associated with aging. All of these contribute to the individual's reduced productivity. Clearly, there are blind persons who do not need or desire the type of employment provided in workshops. But, there are thousands of blind and multihandicapped blind workers who do desire, prefer, and obtain a sense of fulfillment from the work provided through workshops.

ADDITIONAL RESPONSES TO TESTIMONY

NIB feels that the suggestion by small business advocates to include a non-transferability clause in H.R.3866 should not be implemented. Such a provision would prevent the transference of a small business set-aside awarded to a workshop from being added directly to the Procurement List. The implementation of

such a non-transferability clause could be detrimental to continual, stable employment opportunities within the workshop awarded a small business set-aside and to the future growth of employment opportunities for blind and severely handicapped individuals under the JWOD program.

National Industries for the Blind supports the concept of the Senate amendment to S.2147, the companion bill to H.R.3866, which provides that "...in each of the fiscal years 1987 through 1991, no more than $8,000,000 of the $50,000,000 authorized for participation by subparagraph (A) may be placed on the procurement list..." (Senate Report 99-318). This amendment is a fair compromise which permits continued growth under the Javits-Wagner-O'Day Act program, while protecting the interests of small businesses.

During the National Federation of the Blind's oral statement before the Small Business Subcommittee, it was mentioned that there have been a number of Congressional and private studies suggesting improvements for programs authorized under the Javits-Wagner-O'Day Act. The consensus of these reports was extremely positive about the program. National Industries for the Blind, as well as its associated workshops, has welcomed the suggested ideas for improvement and has diligently worked in recent years to have an even more efficient and effective program which more adequately addresses the employment needs of

blind persons. We would strongly urge you to read the most recent Government Accounting Office Report (Report Number HRD-86-82BR) focusing on the Javits-Wagner-O'Day Act which was issued on June 5, 1986.

Again, National Industries for the Blind would like to thank Congressman Mitchell and the House Small Business Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems for this opportunity to state our position and to clarify some of the comments made in the testimony presented during your recent hearing on H.R.3866.

NATIONAL INDUSTRIES FOR THE BLIND
524 Hamburg Turnpike, Wayne, New Jersey 07470
Telephone (201) 595-9200

April 5, 1985

TO: ALL NIB-ASSOCIATED INDUSTRIES

SUBJECT: Upward Mobility

As you know, there has been considerable discussion during the past few years as to what constitutes the upward mobility of blind persons served in associated workshops.

At a meeting of NIB's Board of Directors held on February 2, 1985, a resolution was unanimously adopted by the Board establishing NIB's position on the upward mobility of blind persons. A copy of this position as passed by the NIB Board is attached for your information.

Based on this Board policy, the Workshop Compliance Department of NIB will continue to review and evaluate the upward mobility program of associated workshops through regular on-site visits and through periodic questionnaires.

Your cooperation is appreciated in assisting NIB's Compliance Department in their monitoring efforts to ensure that the maximum employment potential of blind workers is encouraged throughout the workshop system.

Sincerely,

George J. Mertz
President

GJM:gmr

Enclosure

65-707 0 - 87 - 5

NATIONAL INDUSTRIES FOR THE BLIND

POSITION ON UPWARD MOBILITY

Since the inception of the Wagner-O'Day program, National Industries for the Blind and the associated workshops have always encouraged upward mobility and been cognizant of the need to recognize those qualified blind persons in the workshops who could accept, were interested in, and had the ability to assume positions of greater authority or responsibility in the workshop programs. The information provided by the associated agencies to NIB over the years on the number of blind persons who have moved upward into more responsible positions, including supervisory or administrative functions, in agencies and workshops associated with NIB is a matter of record.

The associated workshops have continued their efforts to provide upward mobility opportunities to those blind persons being served who could take advantage of such opportunities. Special emphasis has always been on placing qualified blind persons in supervisory or management positions which represents one form of upward mobility, but does not exclude other avenues of upward mobility for those blind persons who can aspire to more responsible positions within the workshop but who for various reasons or conditions may not be able to assume a managerial or supervisory position.

Good-faith efforts to provide and fill supervisory or managerial positions with qualified blind persons should be a part of each agency's affirmative action process. Each agency associated with NIB has in place a system of at least annual review of the performance of each blind person being served in order to be constantly aware of the potential of each blind person for possible advancement.

While NIB and the associated agencies recognize the need for utmost emphasis to bring qualified blind persons into managerial and supervisory positions, NIB also believes that seriously limited blind persons deserve the same consideration as the more capable blind person. Thus, we cannot preclude from consideration the conscientious efforts, made both by the blind person and the workhshop's supportive staff, which results in what one might consider minimal upward mobility, but which at the same time represents a tremendous step forward as a result of great effort, limited though it might be, by a seriously limited blind person.

NIB believes that, as a matter of internal policy and principle, because of the commitment to priorities in serving multihandicapped blind persons, a responsible program of upward mobility includes:

1. The movement of a blind person from an activity in vocational evaluation, prevocational training, or on-the-job training to a paid position as a worker receiving an employment service in the workshop.

2. The movement of a limited blind person from employment in a Work Activities Center program to an employment service in the workshop.

3. The movement of a blind worker from a direct labor position to a higher earning direct labor position.

4. The movement of a blind worker from a direct labor position to an indirect labor position.

5. The movement of a blind worker from a direct or indirect labor position to a supervisory, administrative, or managerial job in the workshop, or placement in a position in the private sector.

With the realization that blind persons capable of competitive employment, who might qualify for managerial positions, are generally not referred to workshops by state agencies, NIB will continue to monitor and encourage upward mobility programs in the advancement of blind workers in its associated workshops.

Adopted by the NIB Board of Directors on February 2, 1985

APPENDIX C.—LETTER FROM JAMES W. WELLS, PRESIDENT, THE GENERAL COUNCIL OF WORKSHOPS FOR THE BLIND

THE GENERAL COUNCIL OF WORKSHOPS FOR THE BLIND
315 Hubert Street
Raleigh, North Carolina 27603
(919)833-8611

June 20, 1986

The Honorable Parren Mitchell
Chairman
House Small Business
Subcommittee on SBA and SBIC Authority,
Minority Enterprise and General
Small Business Problems
2361 Rayburn Office Building
Washington, DC 20515

Dear Congressman Mitchell:

I am writing on behalf of the General Council of Workshops for the Blind (GCWB) to express our position on House Bill 3866. I am requesting that this letter be included as part of the hearing record on H.R.3866.

The General Council of Workshops for the Blind is a national organization representing 83 multiservice agencies which operate 103 workshop programs serving blind and multihandicapped blind persons. The majority of the member agencies of GCWB provide goods and services produced by blind workers to the Federal government as authorized by the Javits-Wagner-O'Day Act (P.L. 92-28). For nearly fifty years, the Javits-Wagner-O'Day (JWOD) Act has provided a valuable source of employment for thousands of blind and multihandicapped blind persons who largely have been denied access to the competitive employment sector.

Broadening the market of viable employment opportunities for blind and other severely handicapped persons is the central goal of the Javits-Wagner-O'Day Act. The purpose of the legislation was and is to provide steady, renumerative employment in, as well as through, workshops for the blind and workshops for the other severely handicapped.

Since the late 1970's when the concept of workshops bidding competitively on small business set-asides was initially being discussed, the General Council of Workshops for the Blind has not fully and unconditionally supported this legislation. Our position remains the same today. The extent to which workshop participation in the small business set-aside program would

represent a realistic source of expanded employment opportunities for blind, multihandicapped blind, and severely handicapped individuals is questionable in light of the limited number of set-asides awards to workshops, in general, previously. During the two previous authorization periods, FY'78 and FY'81 through FY'83, the GCWB workshop community has tended not to utilize the small business set-aside program. Our workshops represent a significant number of all workshops for the blind in this country. Thus, the small business set-aside has not provided a substantive means of expanding employment opportunities for blind workers in sheltered workshops.

The GCWB strongly feels that the JWOD Act is one of the primary legislative initiatives to open avenues of employment for blind and severely handicapped Americans, and notably for multihandicapped blind persons. Further, we feel that some of the limitations which might be added to the small business set-aside bill, as suggested during the House hearing, would do little to supplement the efforts being achieved under the JWOD Act and may, in effect, weaken the JWOD program, thus reducing employment opportunities.

The panel of small business witnesses made some suggestions which, if included in the bill, would threaten the priority system presently established under the JWOD Act. The JWOD Act provides a priority in the procurement of commodities and services for the Federal government from qualified sheltered workshops for the blind and other severely handicapped over competitive industry. Currently, the JWOD program takes precedence over the Small Business programs. The Small Business Administration (SBA) and the Committee for Purchase from the Blind and Other Severely Handicapped have established that any small business set-asides are eligible for addition to the Procurement List if found to be suitable. This means that workshops for the blind and workshops for the other severely handicapped are permitted to add any suitable items (including small business set-asides) to the Procurement List under the JWOD program, provided that there will not be a serious adverse impact on the current or most recent contractor.

Previously, small business representatives have advocated a non-transferability clause which would serve to prohibit certain small business set-asides (including those awarded competitively to sheltered workshops) from being transferred to the JWOD program. If a non-transferability clause were to be enacted, it would challenge the existing priority for JWOD over small business set-asides. The GCWB supports the proposal

introduced to the Senate companion bill by Senator Weicker which would permit full transferability of small business set-aside contracts awarded to sheltered workshops to the Procurement List under the JWOD Act program with a cap of $8 million per year. This cap of $8 million represents five one hundredths of one percent of the approximately $15.6 billion awarded each year to small businesses under the set-aside program. We feel that this amendment strikes a good compromise in protecting the concerns of small businesses, while maintaining the viability of the JWOD Act program.

Each of the individuals comprising the panel of blind persons mentioned upward mobility within workshops for the blind. One witness noted the 1983 House Report #98-546 in which Congressman Barney Frank, chairman of the oversight subcommittee for JWOD, stated that the upward mobility of blind and handicapped individuals in workshops should be improved and encouraged. Since the issuance of this report, Congressman Frank's staff has more closely monitored the activities of the central nonprofit agencies and their associated workshops to ensure that suggested improvements were being addressed.

The GCWB feels very strongly that blind workers who are capable of filling non-direct, supervisory and management positions should be promoted. In an effort, to highlight the need for our member agencies to be more cognizant of promoting blind workers, the GCWB passed a resolution in 1985. This resolution stressed the importance of each workshop to establish a formalized upward mobility plan. Resolution 85-1 is attached for your review.

The General Council of Workshops for the Blind hopes that you will consider our remarks about H.R.3866 in your future deliberations of the bill. We feel strongly that the JWOD Act is an appropriate and primary mechanism to address the employment needs for certain blind and multihandicapped blind persons and that the small business set-aside program should not be allowed in any way to impact on the success that the JWOD Act has enjoyed during the past half century.

Sincerely

J. W. Wells

James W. Wells
President

JWW/ymn

Enclosure

GENERAL COUNCIL OF WORKSHOPS FOR THE BLIND

RESOLUTION 85-1

UPWARD MOBILITY

WHEREAS, the primary function of sheltered workshops serving blind persons is to provide an alternative employment service for individuals who are unable or who do not desire to meet the requirements of employment in the open labor market or for whom such employment opportunities are unavailable; and

WHEREAS, through work evaluation, prevocational training, and the required annual evaluation of each worker's capabilities for competitive employment, qualified clients are placed into various remunerative occupations outside the sheltered workshop; and

WHEREAS, the workshops' endeavor to recognize qualified blind persons who can accept, are interested in, and have the ability to assume positions of greater authority or responsibility in the workshop; and

WHEREAS, emphasis is put on placing qualified blind persons, as each opportunity develops, in supervisory and management positions as well as advancing other blind persons to more responsible functions who for various reasons or conditions may not be able to assume a managerial or supervisory position; and

WHEREAS, The General Council of Workshops for the Blind believes that consideration must be given the more severely limited blind person who may through great effort achieve upward mobility which represents a significant step forward for that individual; and

WHEREAS, The General Council of Workshops for the Blind believes that upward mobility may be demonstrated in several ways:

1- The movement of a blind person from work evaluation, prevocational training, or on-the-job training to a position in outside competitive employment or as a worker receiving an employment service in the workshop.

2- The placement of a blind person receiving an employment service in the regular sheltered workshop program into competitive employment in the open labor market.

3- The movement of a blind person from therapeutic activities in a Work Activities Center to an employment service in the regular sheltered workshop program.

4- The movement of a blind worker from a direct or indirect labor position to another direct or indirect labor position requiring greater skill or the exercise of more judgment, decision-making, or leadership which may also result in greater earnings.

5- The movement of a blind worker from a direct or indirect labor position to a supervisory, managerial or administrative job.

THEREFORE BE IT RESOLVED that The General Council of Workshops for the Blind assembled in convention in Dallas, Texas, on May 15, 1985, urges each member agency to diligently enhance its efforts to offer upward mobility opportunities to all blind persons served regardless of the severity of their handicaps through an established plan with measurable results.

APPENDIX D.—STATEMENT RECEIVED FROM DEWAYNE ROBERTSON, PRESIDENT, LOUISIANA ASSOCIATION FOR THE BLIND

Louisiana Association for the Blind

June 16, 1986

Congressman Parren Mitchell, Chairman
Subcommittee on SBA and SBIC Authority,
Minority Enterprise, and General Small
Business Problems
House Committee on Small Business
2361 Rayburn Office Building
Washington, DC 20515

Dear Chairman Mitchell:

Louisiana Association for the Blind is pleased to provide a statement to the U.S. House Committee on Small Business. In this testimony is information pertaining to employment within the sheltered workshop and additional information on Louisiana Association for the Blind as a representative example of a workshop for the blind.

Thank you for your consideration and for the opportunity to provide you with this written testimony.

Sincerely,

DeWayne Robertson
President

Enclosure

DR/ket

1750 Claiborne Avenue Shreveport, Louisiana 71103 Phone: (318) 635-6471

(IN RESPONSE TO THE
TESTIMONY OF JAMES GASHEL)

Because Louisiana Association for the Blind has been cited as a typical example of a sheltered workshop during the hearing, we deemed it necessary to offer accurate information to this Committee for Louisiana Association for the Blind's fiscal year 1982, beginning October 1, 1981, and ending September 30, 1982. In addition, I would also like to address other concerns voiced to the Committee on the practices of sheltered workshops.

For your information, Louisiana Association for the Blind (also referred to in this statement as LAB or the Association) paid $338,883.88 total blind wages in all level positions during FY 1982. It is interesting to note that blind direct labor employees were paid $227,937.93 for 60,325 hours which averages $3.78 per hour. In fact, the Association has paid some blind employees in excess of $6.00 per hour for certain jobs.

It should also be noted that the above information includes blind persons who were receiving an employment service in the LAB's training, evaluation and WAC programs.

Mr. Gashell quotes figures of $3,487.51 as the average annual wage for blind and $8,237.37 for sighted. It should be remembered that many blind persons only work part-time for a variety of reasons, including (1) movement to competitive employment, (2) conflict with SSI and SSDI programs, (3) relatively high direct labor turnover because of family concerns, moving, etc.

During FY '82, the 65 blind workers averaged 926 hours, while the 9 sighted direct labor employees who were not subjected to part-time employment averaged 1770 hours.

During the time period quoted by Mr. Gashell, Louisiana Association for the Blind operated a rehabilitation program; however, all staff members employed in that category, regardless of the presence of a disability, were compensated within the same salary ranges.

Sub-minimum wages were paid to blind individuals in LAB's Evaluation and Training Center and in LAB's Work Activities Center programs. In the Training Center program, individuals were trained to perform duties suited to the workshop and to outside employment. Likewise, individuals in the Work Activities Center program, a program that is by definition "therapeutic," were evaluated periodically for upward mobility into the competitive workshop program, as well as into competitive industry. The standards for this evaluation are set forth under the auspices of Department of Labor certification.

We are submitting for the record a 1984 Department of Labor report of an audit conducted on Louisiana Association for the Blind. Louisiana Association for the Blind was found to be in compliance with no violations of the Fair Labor Standards Act or the Walsh-Healy Public Contracts Act. Also submitted are copies of LAB's DOL Workshop Certificates. More recently on March 10, 1986, we were audited by the National Industries for the Blind Compliance Department and were found to be in compliance with no wage and hour violations. Neither investigation was based on a complaint.

In FY 1982, LAB employed a total blind workforce of eighty-nine. Of these 89 individuals, 24 people, or 26.9%, were classified as "management, supervision, indirect labor." As direct labor is the definition of the sheltered workshop's blind/sighted ratio, it is clear that the Association encourages upward mobility in its blind employees. Indicative of our commitment is our Vending Stand Manager, Mr. Larry Williams, who is legally blind. Mr. Williams has prepared a letter to this Committee. It is being submitted separately and is not a part of this statement.

Educational reimbursement for tuition and registrations to employees who wish to further their educations is a policy of Louisiana Association for the Blind as another way to encourage upward mobility. This policy

is published in print and braille in our Employee Policy Manual. A copy of the manual is submitted as a part of this statement. (Note p.23)

Blind employees are considered equally for direct and indirect jobs at Louisiana Association for the Blind.

Although the President of the Association is the general manager of its business, LAB is governed by a Board of Directors that sets policy. Two blind individuals serve on this Board and are fully aware and support the activities of the Association in their payment policies under DOL Certification.

LAB also encourages feedback from its Employee Advisory Committee. The members of this committee represent the employees and are elected to one-year terms by their peers. This committee meets regularly with the President of the Association and has the authority to call a meeting when they deem it necessary.

In Fiscal Year 1982, an average of 17% of wages was given to each employee in additional fringe benefits. This figure was not included in the wages paid previously reported. Besides LAB's group insurance plan, all employees enjoy seven paid holidays per year, paid vacation time, and sick pay. In 1982, LAB also established The Louisiana Association for the Blind Federal Credit Union. The LAB staff volunteers its time to aid employees who utilize the Credit Union, many of whom are unable to obtain loans at banks and other lending institutions or are uncomfortable in dealing with those institutions.

LAB has also established a disability insurance plan and a profit sharing plan for participation by employees. LAB supplies attractive work uniforms at no cost to employees and offers various aids and appliances at cost to those who can afford them and free to those who cannot. In conjunction with a local food bank service, Louisiana Association for the Blind also offers food items at a flat 12¢ per pound to those employees who wish to participate.

In conclusion, Louisiana Association for the Blind strives to fulfill the potential of each of our employees in a fashion that also fulfills the primary objective of this organization: to enhance the quality of life for the blind, mainly through employment, but also in other ways that benefit the blind community as a whole.

We believe that this objective is typical of the workshop program and Louisiana Association for the Blind is proud to be the sheltered workshop cited before this Committee as representative of this program.

U. S. Department of Labor

Employment Standards Administration
Wage and Hour Division
555 Griffin Square Bldg., Rm. 506
Dallas, Texas 75202

Certification Section
(214) 767-4538

September 19, 1984

RECEIVED 9/21/84

DeWayne Robertson, Director
Louisiana Association for the Blind, Inc.
1750 Clairborne Avenue
Shreveport, LA 71103

Dear Mr. Robertson:

I want to thank you for the courtesy and cooperation which you extended to our Compliance Officer, Carroll E. Rast, during his recent investigation of your Sheltered Workshop operation.

In reviewing CO Rast's report, I find that there were no violations of the Fair Labor Standards Act of 1938, as amended (FLSA) and the Walsh-Healey Public Contract Act (PCA).

Based upon this finding of no violations and your assurances of continued compliance, we are closing this case with no anticipation of further action.

Should you have questions about this investigation or other Wage and Hour matters, please contact Pamela Moye, Section 14 Specialist, of my staff at the above address and telephone number.

Sincerely,

A. A. RAMSEY
Assistant Regional Administrator
for Wage and Hour

cc: Ernest Carpenter
705 Petroleum Tower
Shreveport, LA 71101

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

Renewal 525 LA
No. R. P - WAC

SHELTERED WORKSHOP CERTIFICATE

This certificate, issued pursuant to Regulations, Part 525 (29 CFR 525), is applicable under the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, and on contracts of $2500 or less under the Service Contract Act. It does not apply to work performed on contracts in excess of $2500 under the Service Contract Act unless such authorization is specifically spelled out herein.

Louisiana Assn. f/t Blind
1750 Claiborne (P.O. Box 3821)
Shreveport, La 71103

DURATION OF CERTIFICATE:
EFFECTIVE: 1/1/82
EXPIRES: 12/31/82

NAME OF WORKSHOP UNIT, PROGRAM OR WORKER	LEARNING, EVALUATION OR TRAINING PERIOD		SHOP RATE	INDIVIDUAL WORKER RATE
	DURATION (show hours or months)	MINIMUM WAGE PER HOUR (If applicable)	MINIMUM WAGE PER HOUR FOLLOWING LEARNING, EVALUATION AND/OR TRAINING	MINIMUM WAGE PER HOUR
Regular Program	1000 Hours	$1.68	$2.53	
WAC			No minimum wage rate guarantee applies, but the COMPENSATE WAGE RATE must be paid, and the provisions in item one on the reverse of this certificate must be followed.	

AUTHORIZED REPRESENTATIVE OF ADMINISTRATOR
OFFICE OF THE SECRETARY OF LABOR

A. A. Ramsey
TITLE
Assistant Regional Administrator W/HR ESA

See other side for additional terms

Form WH-226 (Rev. Apr. 1977)

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

RECEIVED AUG 19 1985

No. 06 22 0005
Amended Cert. to add WAC

SHELTERED WORKSHOP CERTIFICATE

This certificate, issued pursuant to Regulations, Part 525 (29 CFR 525), is applicable under the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, and on contracts of $2500 or less under the Service Contract Act. It does not apply to work performed on contracts in excess of $2500 under the Service Contract Act unless such authorization is specifically spelled out herein.

Louisiana Association for the Blind
1750 Claiborne Ave.
Shreveport, LA 71103

DURATION OF CERTIFICATE:
EFFECTIVE: 06/18/85
EXPIRES: 12/31/85

AMENDED CERTIFICATE TO ADD WORK ACTIVITY CENTER

NAME OF WORKSHOP UNIT, PROGRAM OR WORKER	LEARNING, EVALUATION OR TRAINING PERIOD		SHOP RATE	INDIVIDUAL WORKER RATE
	DURATION (show hours or months)	MINIMUM WAGE PER HOUR (if applicable)	MINIMUM WAGE PER HOUR FOLLOWING LEARNING, EVALUATION AND/OR TRAINING	MINIMUM WAGE PER HOUR
Work Activity Center			No minimum wage rate guarantee applies but the COMMENSURATE WAGE RATE must be paid, and the provisions of Item # 1 on the reverse of this Certificate must be followed.	

AUTHORIZED REPRESENTATIVE OF ADMINISTRATOR
OFFICE OF FAIR LABOR STANDARDS

TITLE
A.A. Ramsey
Asst. Reg. Admin., W/Hr.

See other side for additional terms

Form WH-226 (Rev. Apr. 1977)

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

RECEIVED JAN 14 1985

ID No. 06 22005 525
R.P. - NO E & T

SHELTERED WORKSHOP CERTIFICATE

This certificate, issued pursuant to Regulations, Part 525 (29 CFR 525), is applicable under the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, and on contracts of $2500 or less under the Service Contract Act. It does not apply to work performed on contracts in excess of $2500 under the Service Contract Act unless such authorization is specifically spelled out herein.

Louisiana Association f/t Blind
1750 Claiborne Avneue
Shreveport, LA 71103

DURATION OF CERTIFICATE:
EFFECTIVE: 01/01/85
EXPIRES: 12/31/85

No lapse extended
to 1/15/85

NAME OF WORKSHOP UNIT, PROGRAM OR WORKER	LEARNING, EVALUATION OR TRAINING PERIOD		SHOP RATE	INDIVIDUAL WORKER RATE
	DURATION (show hours or months)	MINIMUM WAGE PER HOUR (If applicable)	MINIMUM WAGE PER HOUR FOLLOWING LEARNING, EVALUATION AND/OR TRAINING	MINIMUM WAGE PER HOUR
Regular Program	1000	$1.68	$2.53	

AUTHORIZED REPRESENTATIVE OF ADMINISTRATOR
OFFICE OF FAIR LABOR STANDARDS

TITLE

A. A. Ramsey, Asst. Regional Admn. for W/HR

See other side for additional terms

Form WH-226 (Rev. Apr. 1977)

APPENDIX E.—REBUTTAL TO TESTIMONY OF MS. BONNIE PETERSON AND MR. LOCKLEY BREMNER FROM CLAUDE W. HIRSCH, EXECUTIVE VICE PRESIDENT, INDUSTRIES FOR THE BLIND, INC.

INDUSTRIES for the BLIND, INC.
3220 W. Vliet St., Milwaukee, Wisconsin 53208 — Phone 414/933-4319

June 17, 1986

The Honorable Parren J. Mitchell
Chairman
House Committee on Small Business
2361 Rayburn Office Building
Washington, DC 20515

Dear Congressman Mitchell:

Small Business Hearing Rebuttal
of Ms. Peterson's Testimony

We are aware of the testimony presented by Ms. Bonnie Peterson on June 3, 1986, before the committee on Small Business. We have very carefully studied her remarks. For the most part, they are based on partial truths, misinformation, and speculation. We wish to correct the record to clear our good name. We will address Ms. Peterson's points in the order they were presented in her testimony.

We have also included a response to the testimony of Mr. Lockley Bremner of the Blackfeet Indian Writing Company.

Industries for the Blind, Inc. appreciate the opportunity to submit the attached. We specifically request that this letter and all attachments and enclosure be included in the record of the hearings before the House Committee on Small Business, Sub committee on SBA, and SBIC authority Minority Enterprise, and general small business problems regarding H.R. 3866.

Sincerely,

Claude W. Hirsch
Executive Vice President

SKILCRAFT
Quality Blind-Made Products

Industries for the Blind's Responses to Comments of Ms. Bonnie Peterson in her Testimony of June 3, 1986 Before the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems

RE H.R. 3866

[** Rebuttals are given below in order as originally presented]

Peterson Comment

"The office of Federal Contract Compliance programs (DOL) found Industries for the Blind in violation of Section 503 of the Rehabilitation Act..."

Industries Response

There are essentially two parts to this charge:

1) Did Industries violate the provisions of Executive Order 1246 and Section 503 of the Rehabilitation Act?
2) Did Industries specifically discriminate against Ms. Peterson?

In response to this first question, we submit a copy of both the "Notification of Results of Investigation" and the final settlement agreement dated February 14, 1985 (See exhibits 1 & 2). There were some procedural problems which were immediately corrected to the DOL's satisfaction.

As to Ms. Peterson's attempts to obtain a promotion to management for herself, Paragraph 6 of the "Notification" states, "Based on the findings of this investigation, there is insufficient evidence to conclude that the contractor has violated it's obligations..."

The second question, "did we discriminate against Ms. Peterson?", has been answered by the State of Wisconsin Department of Industry, Labor and Human Relations in its "No Probable Cause" determination dated September 11, 1984 and it's Order of Dismissal dated July 22, 1985 (See exhibit 3). The above noted "Notification from the OFCCP also addresses this concern in Paragraph 6.

Peterson Comment

"Industries for the Blind was found to have serious safety violations by the Occupational Safety and Health Administration."

Industries Response

The Company was cited by OSHA on 3/12/85 for machine guarding. The company contested the violations as unwarranted for the company and it's employees.

After a thorough OSHA investigation, most of the matters were dismissed as totally unfounded. See attached letter of May 21, 1985 (exhibit 4).

Subsequently, the original penalties of $240 and $180 were reduced to $25 each (See exhibit 5). The company cooperated with the investigation in every respect and took corrective action beyond the recommendation of the OSHA investigators.

As a result of the OSHA investigation, it was established that there were never any serious safety violations, contrary to Ms. Peterson's uninformed suggestions in her testimony.

Peterson Comment

"I am unable to achieve upward mobility. This is also true of my fellow employees."

Industries Response

Ms. Peterson is to be commended for her dedication and perseverance in obtaining a degree in Professional Communication. However, neither her degree nor her experience were directly related to the two positions for which she applied. Industries does not have any positions

which require these particular specifications.

With regard to upward mobility other employees, please see the attached annual report (See exhibit 6). Page 2 specifically refers to "four promoted under EEO/AAP."

Peterson Comment

"Industries for the Blind has a tendency to encourage slowdowns in production"..."Machinery is not repaired at the usual rate"..."Substandard materials are then used..."

Industries Response

Machines are always slowed down for training of new employees until they can produce up to standard. At other times, machines are purposefully slowed down to provide a steady even pace resulting in less worker fatigue, less waste and higher production. All factory employees are paid at hourly rates, so they are not penalized for slower machine speeds as would be the case for piece rates.

Industries employs competent mechanics and has it's own machine shop. Equipment is maintained on an ongoing basis and repaired as quickly as possible.

Only top quality pen parts are used which must pass strict government specifications. Each shipment of component parts is inspected and tested dimensionally in accordance with MIL-STD 105. All ballpoint component parts are given physical properties tests by the NIB Testing Lab in St. Louis, MO for approval before using.

The company is generally recognized as having one of the best quality control programs of any workshop in the nation.

Industries has always prided itself on the high quality of it's products. It has never had a lot rejection on any of it's products produced for GSA dating back to 1952.

While starting wages are at $5.71 per hour, the average wage for all hourly employees is $9.55 per hour including benefits of $2.95 per hour. Industries is proud that it is the highest paying blind workshop nationally for the third consecutive year.

Industries goes on overtime only to meet GSA delivery dates, most often caused by unusually large government orders which cannot be produced under normal work schedules.

Peterson Comment

"...Now they are asking to be considered for small business set aside contracts."

Industries Response

Industries has never bid under previous set aside provisions, nor does it anticipate doing so in the future. The company has taken no formal position on H.R. 3866.

Peterson Comment

"Milwaukee Industries does not pay income or property taxes...does not have a tuition reimbursement policy, nor will they promote their employees to positions where they would have a voice in the decision making process..."

Industries Response

Industries is a non-profit corporation incorporated in the State of Wisconsin to employ blind people and does not pay property taxes as provided under the law. The company does contribute to the tax base, and to the economy, by employing 93 blind and handicapped people who are tax-paying citizens,

who otherwise would most likely be on public assistance.

Industries does not provide tuition reimbursement because the State of Wisconsin statutes provide that all blind persons who wish are entitled to attend college free of charge.

Peterson Comment

Sheltered workshops should adopt and maintain professional, dynamic, modernistic business standards and ethics.

Industries Response

Industries, as well as a majority of blind workshops, voluntarily submit themselves to regular, comprehensive investigations by the National Accreditation Council (NAC). The purpose of NAC is to establish and monitor standards for ethical and business conduct for workshops, schools, and other institutions who serve the needs of the blind.

The company voluntarily undergoes an annual certified audit by an independent outside auditing firm. The audit includes a review of management systems and procedures in compliance with recognized good business policies.

Industries is also regularly audited by National Industries for the Blind and the President's Committee for compliance with the provisions of the JWOD Act.

Peterson Comment

Congress should not allow workshops to receive small business contracts if workshops are unwilling to treat workers with fairness, to earn more money, and to climb the management ladder.

Industries Response

Industries has always treated it's employees honestly and fairly and is in compliance with all local, state, and federal laws.

It enjoys an enviable record of continuous employment and boasts and average of over 12 years of service for all employees through 1985. The turnover rate is very low with 79% of all employees having over 5 years of service.

As a federal government contractor, Industries has established and Equal Employment Opportunity Affirmative

Action Program.

It also has a DOL approved plan in place for hiring qualified blind, handicapped, women, and Vietnam veterans into management openings.

EXHIBIT NO. 1

Bonnie L. Peterson
5331 South 8th Street
Milwaukee, Wisconsin 53221

COMPLAINANT
E840240

Industries for the Blind
3220 West Vliet Street
Milwaukee, Wisconsin 53208

CONTRACTOR

NOTIFICATION OF RESULTS OF INVESTIGATION

On November 27, 1984, the Office of Federal Contract Compliance Programs, U.S. Department of Labor conducted an investigation of the allegation of discrimination based on sex and handicap made in the complaint of Bonnie L. Peterson filed on July 27, 1984. Our investigation has resulted in the following findings:

1. Industries for the Blind is a government contractor and is not exempt from Section 503 of the Rehabilitation Act of 1973, as amended, and Executive Order 11246, as amended.

2. Bonnie L. Peterson is a woman and a handicapped individual (legally blind) within the meaning of Section 503 of the Rehabilitation Act of 1973, as amended, and Executive Order 11246, as amended.

3. The Complainant alleges the Contractor violated its obligations under the nondiscrimination and affirmative action provisions of its Federal contracts by failing to:

    a. Promote her to one of the two management positions filled during December, 1983 and January, 1984;

    b. Take required affirmative action to recruit and advance women and handicapped workers for and to non-direct labor positions; and

    c. Fulfill all their obligations under Section 503 of the Rehabilitation Act of 1973, as amended.

4. The Contractor's position is:

    a. The Complainant was not discriminated against because of her handicap in that the selection process for both vacancies (the Personnel Production and Materials Handling Manager and the Sales and Sales Promotion Manager) was nearly completed before Ms. Peterson submitted her resume;

Peterson vs. Industries for the Blind

b. Affirmative action recruitment for those positions included canvassing members of the Board of Directors and personal contacts in other organizations serving people with visual handicaps; and

c. Industries for the Blind has an Affirmative Action Program (AAP) and has made and will continue to make every effort to fulfill the affirmative action requirements to the best of its abilities.

5. Our investigation indicates that:

a. Recruiting for "Production Supervisor" was conducted during October of 1983 utilizing those methods discribed in 4b plus a blind advertisement without an EEO tagline in the Milwaukee Journal, (violation of paragraph 2 of the Equal Opportunity Clause included in all Federal contracts);

b. This position was changed to "Personnel, Production and Materials Handling Manager" and on December 16, 1983, was offered to and accepted by a non-handicapped male who was one of the 200 applicants;

c. An "Advertisting and Sales Promotion Manager" position was created and candidate(s) were selected from applications already on file;

d. On January 6, 1984, this new position was offered to and accepted by a non-handicapped male, who was a former part-time shop employee and originally applied for a management position in January, 1983;

e. Ms. Peterson submitted her letter of interest/resume on January 17, 1984;

f. Industries for the Blind has not invited all applicants and employees who believe themselves covered by the Act and who wish to benefit under the AAP to identify themselves as required by 41 CFR 60-741.5(c)(1);

g. Industries for the Blind has neither developed a schedule for review nor conducted a review of all physical or mental job qualification requirements for non-direct labor jobs to insure that, to the extent these requirements tend to screen out qualified handicapped individuals, they are job related and are consistent with business necessity and the safe performance on the job as required by 41 CFR 60-741.6 (c);

Peterson vs. Industries for the Blind

h. The AAP developed by Industries for the Blind does not address all policies, practices and procedures itemized in 60-741.6 (a)through (j) as required by 41 CFR 60-741.5(a); and

i. No information was posted regarding the location and hours during which the AAP is available for inspection by employees or applicants as required by 41 CFR 60-741.5(d).

6. Based on the findings of this investigation, there is insufficient evidence to conclude that the Contractor has violated its obligations under the nondiscrimination provisions of Executive Order 11246, as amended, or Section 503 of the Rehabilitation Act of 1973, as amended. There is however adequate evidence to conclude that Industries for the Blind has not demonstrated adequate affirmative action efforts to employ and advance in employment qualified handicapped individuals and women into all non-direct labor positions. Specifically the actions described in paragraph 5(a) and (f) through (i) above violated the Contractor's affirmative action obligations under the cited regulations.

As set forth in 41 CFR 60-1.24(c)(5) and 41 CFR 60-741.26 (g) the Director of the Office of Federal Contract Compliance Programs (OFCCP) may, upon request, reconsider this decision. If you desire reconsideration, a written request must be submitted to the Director, OFCCP, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 within 30 days of receipt of this notification. It should be understood that any reconsideration will be based on the written case record and will not be a reinvestigation. Rather, it will be an examination of the application of the law to the facts determined in the investigation. You must provide additional information and any new data in support of your position that the Regional decision was incorrect. Medical reports and/or opinions, signed written statements by supervisors or fellow workers, and other written documentation and supportive materials not already considered in the original decision are the types of information that would be appropriate to support your request for reconsideration by the Director. Failure to provide such information and documentation will cause the Director, OFCCP, to reject the request for reconsideration and close the case with no further opportunity for reconsideration.

In accordance with the regulations implementing the handicapped individuals and Executive Order 11246 programs (41 CFR 60-741.26 (g)(2) and 60-1.24(c)(2)) the Department now invites Industries for the Blind to join with it to resolve this matter through conciliation by informal means. An

Peterson vs. Industries for the Blind

Equal Opportunity Specialist from this office will be in contact with Industries for the Blind within ten (10) days to begin the conciliation process.

On behalf of the United States Department of Labor

PETER M. SILVA
Area Office Director

DATE 1/22/85

FEB 13 1985

EXHIBIT NO. 2

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs
Henry S. Reuss Federal Plaza
310 W. Wisconsin Avenue
Suite 1115
Milwaukee, Wisconsin 53203

FEB 12 1985

Reply to the Attention of:

Mr. Claude Hirsch
Industries for the Blind
3220 West Vliet Street
Milwaukee, Wisconsin 53208

Dear Mr. Hirsch:

This is to confirm that on February 5, 1985, Industries for the Blind and the Office of Federal Contract Compliance Programs, U.S. Department of Labor agreed to settle the complaint of Bonnie L. Peterson against Industries for the Blind alleging a violation of the nondiscrimination and Affirmative Action Clauses of your Federal contracts required by Section 503 of the Rehabilitation Act of 1973, as amended, and Executive Order 11246, as amended. The terms and conditions of agreement are as follows:

1. As required by paragraph 2 of the Equal Opportunity Clause in the Federal contracts Industries for the Blind will, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin;

2. As required by 41 CFR 60-741.5(c)(1) Industries for the Blind issued and will continue to issue to all applicants and employees who believe themselves covered by the Act and who wish to benefit under the Affirmative Action Program (AAP) the invitation to identify themselves;

3. Industries for the Blind will consider Ms. Peterson's letter of interest/resume as her response to that invitation and of her interest in being considered for any future office and management openings;

4. As required by 41 CFR 60-741.6(b), Industries for the Blind agrees by June 30, 1985, to conduct a review of their personnel processes as they apply to office and management group jobs to determine whether their present procedures assure careful, thorough and systematic consideration of the job qualifications of known handicapped applicants and employees and are designed to facilitate a review of the implementation of this requirement;

5. As required by 41 CFR 60-741.6(c) Industries for the Blind has developed and shall adhere to a schedule for the review by August 1, 1985, of all physical or mental job qualification requirements for office and management group positions to insure that, to the extent qualification requirements tend to screen out qualified handicapped individuals, they are job related and are consistent with business necessity and the safe performance of the job;

6. As required by 41 CFR 60-741.5(a) and (b), Industries for the Blind has revised and shall annually review and update its AAP to address the requirements of 41 CFR 60-741.6(a) through (j);

7. As required by 41 CFR 60-741.5(d) Industries for the Blind has made the AAP available for inspection to any employee or applicant for employment upon request and has posted the location and hours during which that AAP may be obtained;

8. Industries for the Blind agrees to submit a report to OFCCP by August 1, 1985, which shall include an explanation of actions taken to fulfill each of the above terms and conditions; and

9. This Letter will remain in effect for two years from the date of signature by Industries for the Blind.

10. By entering into this Settlement Agreement, Industries for the Blind does not admit that it violated any affirmative action or equal employment opportunity laws, policies or regulations.

For and in consideration of the aforelisted commitments the U.S. Department of Labor hereby accepts this Agreement for the purpose of making a full settlement of any and all claims arising out of the filing of a complaint by Ronnie L. Peterson.

Sincerely,

Robert S. Brown

PETER M. SLIVA
Area Office Director

I have read the provisions set forth above and they completely and accurately reflect our Agreement to resolve this complaint under the Rehabilitation Act of 1973, as amended.

Date: 2/14/85

Claude Hirsch

CLAUDE HIRSCH
Industries for the Blind

Date Approved: 3/14/85

John R. Checkett

JOHN R. CHECKETT
Assistant Regional Administrator
OFCCP, Region V

EXHIBIT NO. 3

JUL 23 1985

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR, AND HUMAN RELATIONS
EQUAL RIGHTS DIVISION

Bonnie Peterson
5331 South 8th St.
Milwaukee, WI 53221,

Complainant,

vs.

ORDER OF DISMISSAL

Industries for the Blind
3220 W. Vliet St.
Milwaukee, WI 53208,

ERD Case No. 8450833
EEOC Case No. 055841641

Respondent.

In a complaint filed with the Equal Rights Division of the Department of Industry, Labor and Human Relations on May 4, 1984, the Complainant alleged that the Respondent had discriminated against her because of sex and handicap in regard to promotion, in violation of the Wisconsin Fair Employment Act. In an Initial Determination issued on September 11, 1984, an investigator for the division concluded that there was no probable cause to believe that the Respondent had discriminated against the Complainant as alleged. The Complainant filed a timely appeal of the Initial Determination of no probable cause and, pursuant to notice, the matter was scheduled for hearing before the undersigned hearing examiner on July 10, 1985.

Prior to the day set for hearing, the Complainant advised the division in writing that she wished to withdraw her complaint.

Based on the Complainant's request for a withdrawal of her complaint, the examiner makes the following:

ORDER

That the complaint in this matter be dismissed.

Dated at Milwaukee, Wisconsin JUL 22 1985

David B. Nance
Hearing Examiner

DBN:ER298:09

cc: Complainant
Respondent

EEOC

Attorney Thomas Scrivner
Michael, Best & Frederick
250 E. Wisconsin Ave.
Milwaukee, WI 53202-4286

Attorney Barbara Zack-Quindel
Perry, First, Reiher, Lerner & Quindel
1219 N. Cass St.
Milwaukee, WI 53202-2770

EXHIBIT NO. 4

MAY 24 1985

U.S. Department of Labor

Occupational Safety and Health Administration

(414) 291-3315
Henry S. Reuss Federal Plaza
310 W. Wisconsin Ave.-Suite 1180
Milwaukee, Wisconsin 53203

May 21, 1985

Mr. Claude Hirsch
Executive Vice President
Industries for the Blind
3220 W. Vliet Street
Milwaukee, WI 53208

Dear Mr. Hirsch:

This is to confirm the sampling results of the inspection conducted by this office from February 5, 1985 to May 2, 1985. A copy of all the inspection results is included for your files.

At the pencil shaper and in the brush machine department employee noise exposures were in compliance. Employee exposures to paint solvents at the pencil painting area, nuisance dust in the brush department and pencil shaper, and asbestos exposure in the warehouse were all in compliance. In addition carbon monoxide was not detected At the pencil painting area.

In summary during the inspection no air contaminant exposures were found. If you have any questions or need clarification of the sampling results please call this office at (414) 291-3315.

Sincerely yours,

Gerald O. Cunningham
Area Director

TD/cks

EXHIBIT NO. 5

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

WILLIAM E. BROCK, Secretary of Labor, United States Department of Labor, Complainant,	:	OSHRC
v.	:	Docket No. 83-0298
INDUSTRIES FOR THE BLIND, Respondent.	:	

SETTLEMENT AGREEMENT

Complainant, WILLIAM E. BROCK, Secretary of Labor, United States Department of Labor, and respondent, INDUSTRIES FOR THE BLIND, pursuant to Rule 100 of this Commission hereby agree to the disposition of this matter on the following terms:

I

(a) Complainant hereby amends the Complaint and Citation and Notification of Penalty No. 1 referred to in the Complaint to propose the following penalties:

Item Number	Amended Proposed Penalty
1 of Citation and Notification of Penalty No. 1	$ 25.00
2 of Citation and Notification of Penalty No. 1	$ 25.00

(b) Complainant hereby amends the Complaint and Citation and Notification of Penalty No. 1 referred to in the Complaint to propose the following abatement dates:

Item Number	Amended Proposed Abatement Dates
1 of Citation and Notification of Penalty No. 1	September 1, 1985
2 of Citation and Notification of Penalty No. 1	September 1, 1985

Said amended abatement dates are reasonable in that they allow respondent sufficient time to abate the alleged violative conditions.

II

Respondent has no objection to the complainant amending the Complaint and Citation and Notification of Penalty No. 1 as set forth in paragraph I above.

III

Respondent hereby withdraws its answer to the complaint, as amended herein, and its notice of contest to the Citations and Notifications of Penalty, as amended herein. Respondent makes the following representations and assurances to complainant:

(a) The conditions alleged in the complaint and Citations and Notifications of Penalty have been abated and/or will be abated by the proposed abatement dates as modified by this Settlement Agreement. Respondent agrees to file with the Milwaukee Area Director, on or before September 1, 1985, a complete abatement report concerning the status of the items in question.

(b) To the best of respondent's knowledge and belief, respondent is currently complying, and in the future will in good faith continue to attempt to comply, with the provisions of the Act, and applicable standards promulgated pursuant thereto.

(c) Respondent has forwarded to complainant a certified check payable to "Occupational Safety and Health Administration - Labor" for $50.00, the unpaid balance of penalties herein.

IV

Based on the aforesaid assurances by respondent, complainant has no objection to the withdrawal of its answer and notice of contest.

V

Except for these proceedings, and any other subsequent proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by respondent shall be deemed an admission by the respondent of the allegations contained within the Citations and Notifications of Penalty and the Complaint. The agreements, statements, findings, and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

VI

Respondent certifies that this Settlement Agreement has been given to employees represented by an authorized representative, by serving a copy on John W. David, IAMAW, District 10, 624 North 24th Street, Milwaukee, Wisconsin 53233

by (check one) X first class mail, _____ personal delivery, on said labor organization, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure. It is hereby further certified by respondent that this Settlement Agreement has been served on employees, if any, not represented by an authorized employee representative, by posting this agreement in a place where the Citation is required to be posted, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure.

VII

The complainant and the respondent agree that an order should be entered which:

A. Amends the Citations and Notifications of Penalty and Complaint, as set forth above.

B. Allows respondent to withdraw its Notice of Contest to the Citations and Notifications of Penalty, and its answer to the Complaint, as amended herein.

C. Affirms the Citations and Notifications of Penalty, as amended, and affirms the penalty in the amount proposed with no costs, fees or other expenses to be assessed or awarded to any of the parties in this litigation.

DATED: May 29, 1985.

INDUSTRIES FOR THE BLIND

By _____
Its Executive V.P.

By _____
THOMAS W. SCRIVNER
Attorney For Respondent

FRANCIS X. LILLY
Solicitor of Labor

JOHN H. SECARAS
Regional Solicitor

_____
RONALD L. BARSON
Attorney

SOL #83-20161

NOTICE

Any party (including any authorized employee representative of affected employees and any affected employee not represented by an authorized representative) who has any objection to the entry of an order as set forth in this agreement, must communicate such objections within (10) days of the posting of this agreement to the Honorable James A. Cronin, Jr., Judge, Occupational Safety and Health Review Commission, Suite 1718 Prudential Plaza, 1050 Seventeenth Street, Denver, CO 80265, with copies to attorneys for complainant and respondent.

INDUSTRIES FOR THE BLIND'S RESPONSES
TO TESTIMONY OF MR. LOCKLEY BREMNER, V.P.
BLACKFEET INDIAN WRITING COMPANY

Industries for the Blind, Milwaukee [IFTB] began assembling wood case lead pencils for General Services Administration [GSA] in 1973 at which time wood case lead pencils were put on the Procurement List in accordance with the Javits, Wagner, O'Day [JWOD] Act as Amended in 1971.

As required by law, the intention to add pencils to the Procurement List was published in the Federal Register as public notice to all concerned parties. There being no objection received by the Pencil Manufacturer's association [PMA] or the Blackfeet Indian Writing Company [BIWC], wood case lead pencils were added to the Procurement List.

At the outset, IFTB purchased the necessary equipment and floor space to begin assembly operations which consisted of attaching the rubber erasers, imprinting and packaging. When IFTB learned that the BIWC was already making pencil blanks, IFTB began to purchase them from the BIWC to help to support their program. In the meantime, IFTB informed the BIWC that ITFB intended to make pencil blanks in approximately another five years, or commencing in about 1978.

In a letter dated June 2, 1976, Mr. Peter Tracy who was then President of BIWC wrote: 'We are trying to expand our commercial base at a faster rate, on the possibility that the business from Industries for the Blind will disappear in one or two years as you indicated.'

Over the ensuing years, IFTB experienced some quality problems with BIWC pencil blanks. At one time it was necessary to send two IFTB representatives to the BIWC plant in an effort to improve their quality and to reduce waste in various IFTB assembly operations.

It was not until almost eight years later , in 1981 that IFTB first began making the complete pencil blanks which should have given the BIWC ample time to build up their business. From the beginning IFTB has been satisfied to make pencils ONLY for GSA. IFTB has not, nor does it intend to solicit pencil orders from commercial businesses which could adversely affect the BIWC or members of the PMA.

IFTB does not wish to have any confrontations with the BIWC or other pencil manufacturers, but it does wish to preserve the rights of blind and handicapped people to be gainfully employed as the JWOD Act was written.

To clarify any misunderstandings as to it's size, Industries for the Blind, Milwaukee, by definition is not a large business. Its total employment for 1985 was at approximately 115 people including 63 blind and 30 people with other handicaps, while total sales sales were $8, 519,000 of which $1,970,000 was for pencil sales to GSA.

We appreciate the opportunity to express our position on HR3866 and hope you will consider our remarks in your deliberation of the bill.

APPENDIX F.—PREPARED STATEMENT FROM EIVIND H. JOHANSEN, PRESIDENT, NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED, INC.

NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED, INC.
2235 Cedar Lane
Vienna, VA 22180
Telephone (703) 560-6800
TDD (703) 560-6512

HR3866
Appendix - for the Record

June 24, 1986

The Honorable Parren J. Mitchell, Chairman
Subcommittee on SBA and SBIC Authority,
Minority Enterprise and General Small
Business Problems
2361 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Mitchell:

I am enclosing testimony by National Industries for the Severely Handicapped (NISH) for inclusion in the record for the recent Subcommittee hearings held on H.R. 3866. NISH endorses the legislation and appreciates the opportunity to provide comments.

Sincerely,

Eivind H. Johansen
President

ld

Enclosure: Testimony

Harvey P. Goldman, Chairman William Wolk, Ph. D., Vice Chairman Janette B. Loutzenhiser, Secretary Michael Carney, Treasurer Eivind H. Johansen, President

Mr. Chairman, we appreciate the opportunity to submit testimony for the record in support of reauthorization in the Small Business Act of the eligibility for sheltered workshops to bid on small business set-asides. Hereafter, we will refer to "sheltered workshops" as "workshops."

Who Is NISH?

A short description of our agency will help you to understand why we are interested in this bill. NISH is a nonprofit agency that provides technical assistance to workshops interested in securing Federal contracts under the mandatory procurement provisions of Public Law 92-28, the Javits-Wagner-O'Day (JWOD) Act. Our primary objective is to provide jobs for people with severe disabilities. NISH was organized in 1974 with the support of a coalition of national agencies long connected with serving persons with severe disabilities. They are: Association for Retarded Citizens of the United States; Goodwill Industries of America; National Association of Jewish Vocational Services; National Association of Rehabilitation Facilities; National Easter Seal Society; and United Cerebral Palsy Associations. These organizations are the major rehabilitation agencies with direct involvement in operating and providing assistance to workshops serving individuals with severe disabilities. They hold permanent organizational seats on the NISH Board of Directors and work closely with NISH staff to help provide job opportunities to people who desperately need them. All of these organizations strongly support H.R. 3866.

History of Workshop Participation in Small Business Set-Aside Bidding

We would like to begin by saying that the issue of the suitability of workshops bidding on small business set-asides has been addressed by the Congress several times in the past. In fact, Congressional intent to make

small business set-asides available to workshops has been consistent since 1977 when Congress amended the Small Business Act to allow workshops employing people with severe disabilities to bid competitively on these contracts (P.L. 95-89). The statutory extension of workshop eligibility for the program was proposed by the Congress and included in the Omnibus Small Business Act of 1978. The bill was vetoed by the President for reasons not related to the workshop issue. In 1980, the 96th Congress again addressed workshop eligibility to bid on small business set-asides for a three-year period. That eligibility lapsed at the end of the designated time frame (September 30, 1983). Since that date, both Houses of Congress have continued to express the intent that workshops should be eligible to bid on set-asides (as evidenced by the passage of H.R. 3020 and S. 1323 in the 98th Congress).

Why Do Workshops Need Small Business Set-Asides in Addition to JWOD?

Among the issues we would like to address is the question of why workshops need to be able to bid on small business set-aside awards in addition to participating in the Javits-Wagner-O'Day (JWOD) program. There are a number of reasons why the opportunity is important to workshops, but the primary reason is there is a tremendous need for more job opportunities for people with severe disabilities. At the time of the 1980 census, 8.7 million (or 67 percent) of the 12.9 million working age adults with disabilities were unemployed. This high rate of unemployment is even higher and more devastating among people with severe disabilities. The "severely handicapped" employed in workshops are those individuals whose disability is so severe that they are unable to work in the competitive market. It was to address their needs that the Wagner-O'Day Act was amended in 1971 to allow their participation in what is now known as the Javits-Wagner-O'Day program. The JWOD Act has done a superb job of providing employment and training options

for people with severe disabilities, but more is necessary to handle the volume of severely disabled people in need of work.

No other segment of our society has greater job needs. As with other Americans, employment is the key element to successful integration into the community. Jobs provide opportunities for greater independence, self-sufficiency, and self-respect. As a society, we measure success in terms of remunerative employment, and people with severe disabilities also deserve the opportunity to succeed.

Workshops Need Small Contract Work

It would be a great help to workshops and the people they employ if they could again bid on small business set-aside 15(c) contracts. Workshops survive on contract work, much the same way as small businesses do. This is their vehicle to provide earnings and skill development opportunities for their employees with severe disabilities. The small contract that is appropriate for small businesses often is exactly the type of contract that is suitable for workshops.

Location Is Important

In some parts of the country, particularly rural areas, the only Federal contracts available have already been set aside for small businesses. In small communities there may be very few business opportunities, but there are always post offices and military reserve or recruiting offices nearby; and the chance to clean those buildings or provide grounds maintenance services offers valuable opportunities to persons with severe disabilities. If workshops in these communities are precluded from bidding on 15(c) contracts, they are effectively squeezed out of the government market.

Not All Contracts Are Suitable for JWOD

Additionally, many contracts set aside for small businesses are not suitable for JWOD. As a result, without the opportunity to bid on small business set-asides, these opportunities are lost to workshops. JWOD has a number of very specific legal requirements which limit the kinds of items that may be set aside. For example, workshops cannot, under JWOD, consider one-time contracts--the contract must have an on-going requirement. Other contracts that are not available under the JWOD program include contracts requiring assembly only; contracts which involve a close interrelationship with private industries; items not purchased centrally; and items not governed by Federally-controlled specifications, such as multiple award GSA supply schedule items.

While, in some instances, the small business set-aside privilege would not provide the workshop with the important advantages of contract permanency and the longer-term training opportunities for their severely disabled employees that are available under the JWOD program, the set-aside would provide a viable adjunct to JWOD for those workshops that could immediately compete in the marketplace when the government requirement comes up. If a workshop has the experience and capability to immediately bid and can do quality work at a fair, competitive price while it employs people with severe disabilties, why should it be precluded from doing so? By allowing the workshop to bid on small business set-asides, the government reaps both a cost and social benefit.

Impact on Small Businesses

Although workshop participation in the small business set-aside program would clearly provide badly needed jobs for persons with severe disabilities, the question arises as to what impact this might have on the

small business community and how adverse impact should be remedied. In projecting the possibility of future impact on small buisnesses, a number of factors should be considered. They are past workshop participation in the 15(c) program, the number of workshops that would be able to bid competitively, and a comparison of the competitiveness of workshops and for-profit small businesses.

Past Workshop Participation in Small Business Set-Asides

The economic impact of workshop participation in the small business set-aside program between 1981 and 1983 was minimal. NISH records indicate that set-asides won by workshops totaled only $6.7 million. Although the NISH records are informal, we feel total participation could not have exceeded $10 million. During that same period, set-aside contracts won by small businesses totaled $37.5 billion and total small business awards from the government totaled $81.1 billion (see Attachment 1). In other words, workshop participation amounted to less than ¼ of one percent. These numbers are even more insignificant when viewed in the context of sheltered workshop participation in the total Federal procurement market (see Attachemnt 2).

The Department of Labor estimates that there are currently 5,000 workshops in the United States. Of that number, NISH estimates that 40 percent or 2,000 workshops have no meaningful production capability now and will not have adequate capability to be producers in the future. The small number of workshops with the capacity to bid competitively on 15(c) set-asides should not pose a serious threat to our nation's 14 million small businesses.

Workshop Concentration in Certain Industries

While it is generally recognized that past workshop participation was negligible, the Small Business Administration Office of Advocacy raised

the concern, at the Senate hearing, that workshops will be overly concentrated in certain industries resulting in disproportionate impact in those areas. According to the Committee for the Purchase from the Blind and Other Severely Handicapped (CPBOSH), the Federal agency with administrative responsibility for the JWOD program, the data used to draw these conclusions is faulty. The data was obtained from the Federal Procurement Data System which is based on reports submitted by government contracting offices using Standard Form 279 (FAR 53.301-279). This form makes no provision for reporting procurements from workshops under the JWOD program nor is there a specific listing for workshops. The Office of Advocacy, therefore, used the classification "other non-profit institutions" to draw its conclusion. This does not accurately reflect workshop concentration in various industries. Sheltered workshops are involved in the production of a variety of commodities, and they have become increasingly diversified. In FY 1985, NISH workshops had commodities in 56 different supply classes on the Federal Procurement List and a diversity of areas not generally associated with workshop production.

Workshops Are Not Unfair Competition

Charges of unfair competition are frequently leveled at workshops by for-profit businesses because workshops are tax-exempt and have other sources of income. However, these charges neglect to consider the additional costs of operation incurred by workshops which more than offset any advantage gained from these factors. This point is corroborated by a 1981 GAO report and the independent Greenleigh Study. Workshops are actually "disadvantaged" businesses because they have many additional obligations created by the severe disabilities of their workforce. These obligations are not normally associated with business functions and add greatly to the cost of running a small business operation.

If a workshop employs individuals who are 50 percent as productive as workers without disabilities, then it will take twice as many workers to accomplish the same task. This doubles the workshop's need for supervisors, floor space and equipment and correspondingly doubles the costs for all of these. Beyond the complication of employing a larger workforce to accomplish the same task, workshops must meet other special needs of their employees. Often the equipment must be specially adapted in order to be used by people with severe disabilities. Workers with disabilities may function at high levels only for short periods of time and frequently have special medical requirements.

Since the workshop's main purpose is a humanitarian one, more time is spent in training and developing basic work skills. Other rehabilitative and social services are also provided that are not normally functions of for-profit small businesses. Moreover, workshops determine their production methods based on rehabilitative and therapeutic purposes in addition to industrial efficiency. To meet their purposes of training people with disabilities, workshops must concentrate on labor-intensive work rather than work that can be mechanized. Sheltered workshops, thus base their selection of work on volume or availability rather than revenue-producing factors. This reduces the amount of revenue that can be realized by a workshop.

Workshops also face greater paperwork requirements to meet Department of Labor regulations and thus need larger administrative staffs to keep records. Since they employ people with severe disabilities, insurance and safety costs are also much higher for workshops.

Size Standards Are Not Appropriate

While workshops clearly operate at a disadvantage, certain measures have been suggested to ensure that small businesses will experience no adverse

impact from workshop participation. The Small Business Administration has maintained that workshops should meet small business size standards. Although the Senate Small Business Committee considered subjecting workshops to a size standard criteria, this idea was rejected because of the extreme difficulty in designing a standard suitable to the unique characteristics of workshops. Also, it was determined that few workshops would exceed the size standard.

Generally the Small Business Administration requires manufacturing industries to meet a size limit of fewer than 500 employees, and service industries must meet limits in terms of their average annual gross receipts. Because of their unique structure and composition, these standards are not easily applied to workshops. As discussed previously, workshops employ individuals whose level of productivity is lower than persons without disabilities. Depending on the productivity level of their workers, a workshop may need twice as many workers and supervisors to accomplish the same task in the same length of time as a for-profit small business employing able-bodied workers.

Additionally, some workshops are part of larger rehabilitation facilities that include hospitals, schools, and other facilities that are entirely unrelated to the workshop's industrial activities and income. In such cases, the workshop itself may be very small, but because of its affiliation with a comprehensive rehabilitation facility, it would be unfairly excluded from bidding on small business set-asides. Also, many workshops, as part of vocational education programs, have large numbers of students working at their facilities for part of the day. It would be difficult to arrive at determinations about how they should be counted.

Finally, workshops have additional obligations not normally required of small businesses. To meet the special needs of their employees with severe disabilities, workshops offer comprehensive services such as personal adjustment

training, counseling, medical and independent living services. These special services are supplied by trained professionals who are not involved in industrial production and should not be counted in determining the number of employees.

The additional services supplied by workshops are expensive and could not be provided without the help of private and public contributions. In a discussion of the cost of these services, the GAO concluded in its 1981 report that:

> As a result, many private nonprofit corporations operating sheltered workshops would not be able to operate without receiving other sources of income.

Since private and public contributions are the workshops' means of offsetting their additional costs, these funds should not be counted in determining the workshops' annual receipts. Only industrial income should be counted for this purpose.

Timing of the Appeals Process

To remedy severe economic injury, the appeals process should offer timely consideration of the concerns at issue. Small business set-aside awards are won or lost as part of a competitive bidding process that is of an immediate nature. Time limits must be established to allow work to begin on the contract in a time-sensitive manner. S. 2147 sets a ten-day limit for filing an appeal and requires that a decision be rendered within thirty days. Given the immediate nature of the small business set-aside award, we believe such a time frame is appropriate.

Purpose and Terms of Appeal

To allow the decision to be reached in a timely manner, only the next lowest for-profit bidder should be eligible to appeal. The burden of

proof should be on the appellant, and the appellant should be required to produce an audited financial statement to assure an accurate basis for an appeal. The purpose of the appeals process should be a consideration of immediate impact and not the long-term effect of conversion of a small business set-aside award to JWOD. It would be inappropriate to assume that because a 15(c) contract was won by a workshop, it will be transfered to the procurement list under the JWOD Program. This is not an automatic process.

The addition of a strict JWOD non-conversion clause was considered and rejected by the Senate Small Business Committee because it was determined that the addition of such a clause would severely restrict workshop ability to bid on 15(c) contracts. The severe disabilities of their workers requires greater investment of time and resources on the part of the workshop in preparation for a contract. Equipment may need to be specially adapted, transportation lines set up, and extra time is needed to train persons with severe disabilities. These extra requirements make it necessary that contract longevity remain an option. While not all 15(c) set-asides won by workshops would be transfered to the procurement list, many workshops could not afford to compete without the possibility of conversion. To this extent the Senate cap of $8 million a year on transferability is a reasonable compromise between the interests of the small business community and workshops.

Fair Labor Standards Act Protects Workshop Employees

The Fair Labor Standards Act (FLSA) Section 14(c) permits payment of less than the minimum wage to persons with severe disabilities. The payments must be based on the prevailing wage in the locality and must be commensurate with the individual's level of productivity.

Under the provisions of the FLSA, workers with severe disabilities must be paid wages based on their individual productivity, i.e., wages

commensurate with those paid workers without disabilities engaged in similar tasks. Thus, the law is designed to protect workers with disabilities from being paid arbitrarily low wages by sheltered workshops.

Labor issues and statutes concerning individuals with severe disabilities employed in sheltered workshops have been examined extensively by Congressional committees having jurisdiction over labor laws and the Javits-Wagner-O'Day Act. In the 98th Congress, the House Subcommittee on Manpower and Housing held oversight hearings which carefully considered these issues. The result of the hearings was that the Committee made no recommendations for changes in the FLSA provisions which permit payment of less than the minimum wage to workers with severe disabilities. Section 14(c) was designed to provide greater employment opportunities for individuals with severe disabilities, and most workshops could not continue to provide jobs if the wages paid were not commensurate with productivity.

In an examination of the exemption from the subminimum wage guarantee, a 1981 study by the GAO reported:

> Special treatment of the handicapped was recognized because many individuals cannot successfully compete for jobs at the statutory minimum wage because of age or physical or mental disabilities. If a worker's productivity is low, then the worker's earned wages will be low. Arbitrarily raising a worker's wages without a corresponding increase in his or her marginal productivity would place his or her pay above the value of his or her contribution--this situation would make it unprofitable for a workshop to hire or keep the worker. To prevent curtailment of employment opportunities, the special provisions were included in the 1966 amendments to induce

employers to hire handicapped workers who were not capable of earning the statutory minimum wage because of low productivity.

While minimum and more than minimum wages are sometimes paid by workshops depending on the type of contracting (i.e., commodity or service) and the locality, this cannot always be possible. We believe, however, that the jobs offered to individuals with severe disabilities are still worthwhile and should continue. These jobs provide benefits that would otherwise be unavailable. For-profit businesses cannot afford to pay their able-bodied workers more than they produce. Similarly, workshops could not continue to provide jobs for persons with severe disabilities if they were required by law to pay wages greater than the productivity of their workers.

Upward Mobility

With regard to upward mobility, NISH has emphasized the importance of career advancement for persons with severe disabilities and actively monitored workers' placement records. Worker promotion is encouraged, and some people with severe disabilities have moved from direct labor positions to management and supervisory positions.

Additionally, of the 11,432 persons with severe disabilities employed on NISH JWOD contracts during 1985, 5,488 or almost 50 percent were promoted and received wage increases within the direct labor classification. Of course, the ultimate goal is competitive placement and, during 1985, 1,305 of these disabled workers moved into competitive jobs. However, it is important to remember that almost 80 percent of the persons with severe disabilities in NISH workshops are mentally retarded and many have multiple disabilities. Although competitive placement is strongly promoted, NISH also

assists workshops to develop strong alternate programs which encourage upward mobility within the workshop for those who have little hope of competitive placement in today's society.

Subcontracting

Another allegation that presumes that people with severe disabilities will not be the beneficiaries of H.R. 3866 is the charge that workshops will engage in excessive subcontracting. This allegation is entirely unfounded. The purpose of obtaining government contracts is to employ people with severe disabilities. This cannot be done if the work is subcontracted out. Subcontracting is most often done for those types of jobs that would be difficult or dangerous for a severely disabled person to perform--for example, washing the outside of a tenth story window on a janitorial contract.

To dispel the subcontracting myth, we analyzed the government set-asides provided to workshops during the past five years under the JWOD program. The analysis indicates that of the 400 NISH contracts set aside under JWOD during those years, only 78 had small portions subcontracted out ($1 million out of $65 million). Excessive subcontracting by workshops has not been practiced in the past, nor should it be anticipated in the future.

Summary

Workshops want the opportunity to bid on 15(c) contracts because they need the work and the people with severe disabilities they employ need the incomes generated by stable jobs that government contracts usually provide. This segment of our society has an extremely high unemployment rate and faces great obstables to employment. Keeping in mind the definition of "severely handicapped" as precluding the availability of employment in the

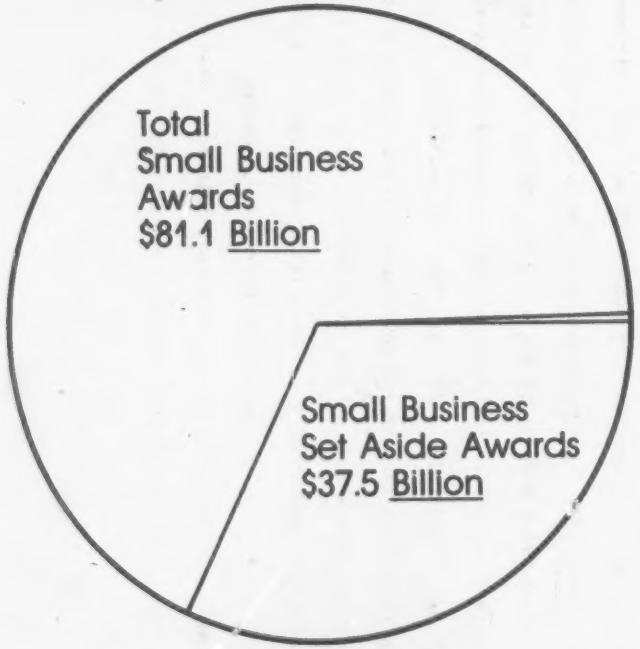
competitive market, we cannot overstate the critical need for more jobs for these individuals. Being able to bid on 15(c) contracts is a privilege that should be expanded to sheltered workshops.

This special program was initially established because small businesses are at a disadvantage in competing against larger businesses. Workshops must overcome these same competitive hurdles and face the added costs and obligations of serving a severely disabled population. It is difficult to conceive of a group more in need of these contracting opportunities.

People with severe disabilities do not ask for a free ride. They only want the chance to be contributing members of society. For people with severe disabilities, jobs offer much more than the opportunity to improve work skills. They offer a sense of pride and self-worth that comes with being productive human beings. This opportunity provides immeasurable benefits to those individuals, their families, and society.

Contracts with the Federal government offer a vehicle to provide those badly needed jobs and the skills, training and rehabilitative benefits that remunerative employment offers. This is an appropriate and worthwhile use of Federal contracting programs. The enormous purchasing power of the Federal government is extensive enough to permit this additional opportunity to this disadvantaged group without adverse impact on the small business community.

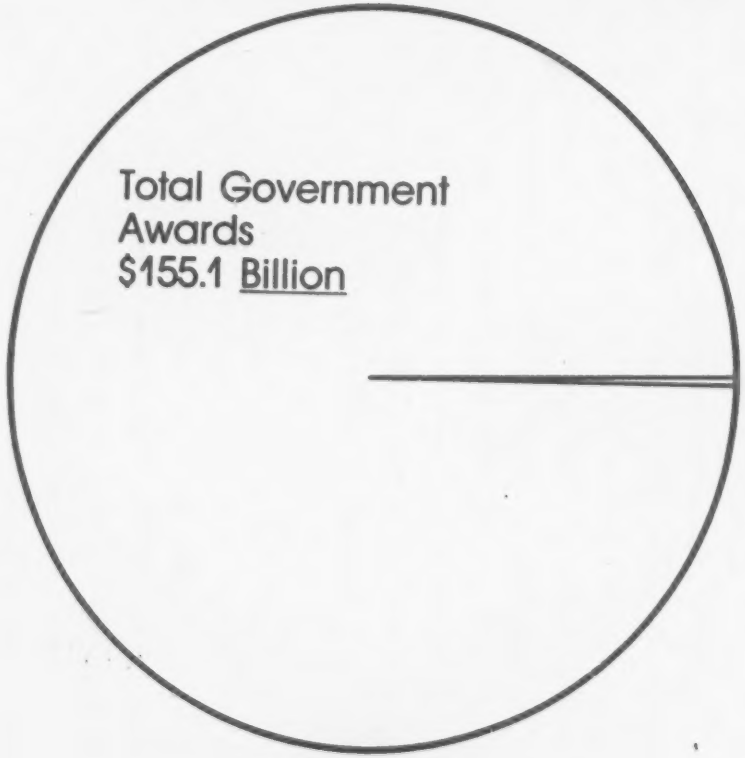
Small Business vs. Workshop Awards



1981-1983

Attachment 1

National Perspective



1984

Attachment 2

APPENDIX G.—PREPARED STATEMENT OF BARRY J. TRILLING, TRILLING & KENNEDY, ATTORNEYS AT LAW, ON BEHALF OF REPRESENTATIVE SMALL BUSINESSES

TRILLING & KENNEDY
ATTORNEYS AT LAW
SUITE 310
1900 L STREET, N.W.
WASHINGTON, DC 20036

BINGHAM KENNEDY
BARRY J. TRILLING

(202) 223-1577

BEFORE THE COMMITTEE ON SMALL BUSINESS
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF BARRY J. TRILLING CONCERNING H.R. 3866
ON BEHALF OF REPRESENTATIVE SMALL BUSINESSES

On behalf of the eleven small businesses identified below, I appreciate the opportunity to comment upon H.R. 3866, legislation which would amend section 15(c) of the Small Business Act to enable nonprofit workshops for the blind and handicapped to be awarded government contracts which are now exclusively "set-aside" for small businesses. These eleven companies, and hundreds of others like them who are engaged in government contract work would suffer severe economic consequences if this legislation were enacted in its current form.

Although the companies who will be effected by H.R. 3866 comprise a wide range of manufacturing, their ability to compete for small business set-aside contracts is limited to a relatively narrow area where they already face competition both from workshops for the blind and handicapped under the Javits-Wagner-O'Day Act ("JWOD"), 41 U.S.C. §46 et seq., but also from Federal Prison Industries under 18 U.S.C. 4121 et seq. Their manufacture of such items as furniture, field hospital equipment, decorative medals and badges, medical devices such as

first aid kits and bandages, clothing, and other products is highly competitive for the limited amount of work available. Each of these companies is the sort of business which the small business set-aside program is intended to benefit, and most are family owned and operated. Several of them have work forces made up primarily of members of minority and other disadvantaged groups, and many are located in "labor surplus" high unemployment areas. All of these companies confront daily competitive pressures in the market place, unfavored by the exemptions from tax and minimum wage laws possessed by the workshops, and not supported by other federally funded programs or charitable contributions such as those enjoyed by the workshops.

These small businesses share a concern for the dignity and self respect of blind and handicapped persons which can be achieved through gainful employment. Small business government contractors take pride in their compliance with the Rehabilitation Act, which requires federal government contractors to recruit, hire, and promote the disabled. In addition many small businesses provide employment for the blind and handicapped by subcontracting work to sheltered workshops, rehabilitation clinics, and psychiatric hospitals. This is all in addition to the contributions many small businesses make by employment of minorities, especially in areas of high unemployment. As I shall

explain in more detail later in these remarks, however, the laudable purpose of providing employment opportunities for those otherwise unable to work would not be served by diminishing the ability of small businesses to compete for the award of government contracts, as H.R. 3866 would do.

In the last session of Congress both the House and Senate passed bills similar to H.R. 3866. As with H.R. 3866 today, however, most small businesses which would have been affected by those bills were not even aware that the bills had been introduced and therefore presented no arguments in opposition. For reasons unrelated to our concerns today, those bills did not survive a conference committee. Fortunately, today there are at least a few companies which are aware of H.R. 3866, but these businesses have no organization or association to parallel the workshop interest groups such as the National Association of Rehabilitation Facilities ("NARF"), the National Industries for the Severely Handicapped ("NISH"), and their blind workshop counterparts to muster support or finance an effort in opposition.

Our clients have the following concerns:

1. H.R. 3866 Will Not Assure Employment of Handicapped and Blind Workers.

As currently worded, H.R. 3866 does not require that the work done in manufacturing any product or providing any service under this program must be performed by handicapped or blind workers. Rather, while eligibility is limited only to workshops which are also eligible for Handicap Assistance Loans under the Act (section 7(h)), the bill would allow a workshop to employ able-bodied labor to perform the contracts obtained. That is, while a workshop must employ handicapped or blind persons for not less than 75% of its overall manhours, it would be allowed to subcontract all the direct labor required to produce an item under this program to commercial firms using able-bodied labor. The intent of the bill to channel the work to its legitimate beneficiaries might also be evaded by the purchase of assemblies and subassemblies as "supplies," which in standard industrial practice would ordinarily be part of the manufacturing or assembly process.

To cure these defects, the bill should explicitly provide that at least 75% of the direct labor required for manufacture and assembly of each commodity produced and service provided pursuant to the contract, including any direct labor performed by

subcontractors, is performed by handicapped or blind individuals. Moreover, workshops bidding on small business set-asides should be required to demonstrate their ability to meet such a requirement by the time of contract performance.

2. Adoption of H.R. 3866 May Result in the Loss of Handicapped and Blind Jobs.

As noted above, small businesses are required to hire and promote the handicapped, and many also subcontract work to workshops, hospitals, and rehabilitation clinics. H.R. 3866 does not require consideration of whether the award of a contract would result in the loss of such jobs for the blind and handicapped. As an example, consider a matter that recently confronted the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. In 1984 the Committee for Purchase proposed to remove from competitive procurement and to assign to a workshop exclusive production of the folding litter support, a battlefield medical care item previously produced by Brenner Metal Products of Wallington, New Jersey. Brenner employed five profoundly deaf assembly line workers and one profoundly deaf supervisor in the production of the item. All these jobs would have been lost had the item been removed from commercial procurement. On the other hand, Committee records disclosed that only one blind or handicapped job would have been created if the proposal were adopted. Under

the Administrative Procedure Act notice and comment procedures required by the Javits-Wagner-O'Day Act, we were able to bring this significant fact to the Committee's attention before any final action was taken. Faced with this and other arguments in opposition, the proposal was withdrawn. In its current form, H.R. 3866 provides no protection for the handicapped and blind workers of small businesses and their subcontractors.

3. By Allowing Workshops to Circumvent the Procedures now Required Under the Javits-Wagner-O'Day Act, H.R. 3866 Would Result in the Elimination of Competition, Higher Prices to the Government, and Unfairness to Small For-Profit Businesses.

There is a strong likelihood, if not outright certainty, that workshops awarded competitive procurements under H.R. 3866 will request the Committee for Purchase from the Blind and Other Severely Handicapped to assign to them all future government business for those items on an exclusive non-competitive basis under the Javits-Wagner-O'Day Act. In deciding whether to make such an exclusive assignment under its operating regulations, the Committee for Purchase must find that doing so will not have a serious adverse impact on the current or most recent contractor only. Thus, when a workshop becomes the current or most recent contractor by virtue of a competitive award, the Committee need no longer consider the adverse economic impact on the for-profit small business which was displaced.

It makes simple economic sense for workshops to convert small business set-aside contracts to exclusive assignments under the Javits-Wagner-O'Day Act:

- Once an item is assigned to a workshop under the Javits-Wagner-O'Day Act, the workshop is protected from any future competition.

- The price then set for the item then will be the greater of 5% above the most recent competitive award price paid by the government or the median of competitive bids within 35% above the most recent award price.

- That increased price will then be adjusted to reflect industry indexes twice again each ensuing year.

National Industries for the Severely Handicapped, the central nonprofit agency which acts as a broker, market researcher, and product development service for handicapped workshops under the Javits-Wagner-O'Day Act, explicitly set forth this goal in a July 27, 1982 submission to the Committee for Purchase. Listing its major objectives for fiscal year 1983, NISH's objective No. 9 was, in part, "Convert at least 10 small business set-aside contracts won by Work Centers to JWOD set-asides."

Indeed, the workshops have been successful in converting small business set-asides to exclusive Javits-Wagner-O'Day Act assignments. Trico Opportunity, Inc. of Kingsford, Michigan, for

instance, successfully converted its competitive award of wooden boxes in 1983 to a Javits-Wagner-O'Day Act exclusive assignment. Moreover, in the short period between October 13, 1983, and January 12, 1984, Committee for Purchase staff sent what it termed "a number of pricing actions" to the Committee regarding commodities for which the workshop was the current or most recent contractor and the workshop sought to have the item added to the Procurement List. Another striking example is that of the Chesapeake Center workshop of Easton, Maryland, which by June, 1984, had converted sixteen competitive awards to exclusive Javits-Wagner-O'Day Act Procurement List additions.

Even more alarming, at least one workshop has used competitive awards of small business set-aside contracts and their subsequent conversion to subsidized Javits-Wagner-O'Day Act assignments in order to provide <u>below cost contracts to large businesses</u>. At its June 14, 1984 meeting, the Committee for Purchase considered how it should establish a "fair market price" for items to be added to the Procurement List when a workshop had originally obtained the procurement by competitive bidding and then sought to have the item assigned to it on a permanent non-competitive basis. The question before the Committee was whether the initial fair market price should ever exceed 5% above the previous award. In arguing for a higher price, Mr. Bryan

Dotsun, General Manager of Phoenix Industries, Huntsville, Alabama, and representative of the South Region of Work Centers, stated:

> "Profit margins realized by the workshop are better under the Committee's program than for other work. This permits the workshop to subsidize its losing operations in the nongovernmental sector. He said that he could not do work for Proctor and Gamble and Parker Pen if he was not able to subsidize those contracts with profits made under the Javits-Wagner-O'Day Act program."

Thus, during the period ending in 1984 when workshops were eligible for small business set-aside awards, that opportunity was used to convert procurements to exclusive contracts, which, in turn, allowed the workshops to supply <u>below</u> <u>cost</u> contracts to commercial sector large businesses. As currently worded, H.R. 3866 would again allow such abuses of the small business set-aside program.

4. The Explicit Provisions for Protection of Small Business in H.R. 3866 are Inadequate.

H.R. 3866 fails to provide adequate remedies for injured small businesses. For example, the "economic injury" required before SBA's Administrator can "take actions" to assist a small business is undefined and subject to arbitrary determination. The bill fails to take into account the harm to the employees of

the displaced for-profit business or its subcontractors that could result from workshop awards; these employees may themselves be blind or handicapped or members of minority or other disadvantaged groups in high unemployment areas. It fails to accord any weight to the plight of contractors who have long standing procurement relationships with the government for their commodities or services and whose businesses may be dependent upon consistent levels of government sales. And, it fails to consider other factors beyond the contractor's control such as the state of the economy, natural disasters, and the effect on the company of past or pending Javits-Wagner-O'Day Act actions.

Moreover, as currently proposed, H.R. 3866 apparently requires both the Small Business Administrator and the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped to agree on an injury determination before the SBA Administrator can act. That determination ought to be allocated exclusively to the Administrator of the Small Business Administration because of SBA's expertise in the economics of small business. The experience of the Committee for Purchase in gauging economic impact on for-profit businesses in the Javits-Wagner-O'Day Act situation is inapposite here, especially in view of the Committee's "mandate" to increase the number of items produced for the government by workshops.

Further, a meaningful remedial provision ought to require the procuring agency to inform both SBA and all unsuccessful bidders of the basis on which it concluded that a workshop would meet the 75% direct labor standard described above and to set forth a schedule for audit of the workshop's compliance with the standard during performance of the contract. In addition, there ought to be a rebuttable presumption of injury, requiring the Administrator's intervention, in the following cases: (1) with regard to a commodity, when the contract award results in procurement from a workshop or workshops of more than 25% of any national stock number and, (2) with regard to a service, when the amount of the contract exceeds $85,000. In those cases the Administrator ought to "take appropriate action" unless he could support a decision otherwise by substantial evidence. Also, strict time limits ought to be imposed on challenge and decision, during which time the contract award would not be implemented.

5. Workshops will Submit Predatory Low Bids to Obtain Competitive Awards to Circumvent Javits-Wagner-O'Day Act Procedures.

Workshops are tax exempt, pay less than minimum wage, enjoy public and private subsidies, and can therefore submit predatory low price bids in order to be awarded small business set-aside contracts. Such "buying-in" is unlawful for private firms seeking government contracts, but would be difficult to

demonstrate in the case of a workshop. The difficulty arises because, depending upon the method of accounting used by a workshop, it can disguise the direct and indirect subsidies which relieve many of its overhead and fixed costs.

The Committee for Purchase, NISH, and the workshops all realize, however, that it is possible for workshops to be awarded contracts on a competitive basis by "buying-in," with the expectation that they will be able to convert the competitive awards to Javits-Wagner-O'Day Act exclusive assignments, with constant upward adjustment of prices to make up for initial low bids. The resultant effect not only eliminates the consideration of impact on a displaced for-profit contractor, but also establishes the workshop's initial capability to produce the item. The staff of the Committee for Purchase recognized these problems and submitted a proposed solution for consideration by the Committee in its October 14, 1982 meeting. The minutes of that meeting include the following statement by Committee staff:

> "In the past, a number of procuring activities have questioned paying the workshop a higher price for an item being added to the Procurement List than the price the same workshop was receiving as a result of having been awarded a competitive contract for the item. Similarly, procuring activities have questioned using workshop's bids on the competitive procurements of items already on the Procurement List in computing the fair market prices for those items.

* * *

"Under the present policy, the workshop may be accused of submitting an unusually low bid (buying-in) with the expectation that the fair market pricing procedures will ensure a higher price which will be acceptable in the long run. Another reason that a workshop might submit an unusually low bid would be to receive the award thereby eliminating impact on a commercial supplier."

Examples of such abuses were given to the Committee by its Executive Director, Charles W. Fletcher, at the Committee's meeting on October 13, 1983, when Mr. Fletcher identified three specific items where the workshop was a prior contractor and the prices at which the commodities were set by the Committee greatly exceeded the prices at which the workshops won the competitive award for the items:

"1. Janitorial at Lewisville - 13.4% above award price

"2. Wiping cloths at Pearl Harbor - 13.9% above award price

"3. Cover, field pack - 21.5% above award price

* * *

"Mr. Fletcher said that the Committee staff has observed a sense of frustration on the part of procuring activities in these and similar cases. He said that, in the procuring activities' view, the workshop has bid-in low and the Committee has bailed it out using the Committee's pricing procedures."

Even one of the workshop's most ardent supporters on the Committee for Purchase, Mr. Mervin J. Flander, a blind citizen, stated his view of this problem at the Committee's March 8, 1984 meeting:

> "[T]he problem arises when a workshop deliberately under-bids, produces for a short time and then proposes to add the item to the Procurement List."

With regard to the workshops' claim that their operating expenses outweigh the advantages they gain from favorable tax and wage laws and charitable contributions, most workshops in the Javits-Wagner-O'Day Act program operate with comfortable operating margins. That is, they make "profits" which, while not distributed to any individual, are used beyond expense outlay. Workshops are ordinarily connected with the social service and training agencies of local communities which provide their "clients" the kind of services they claim are necessary in the workshop itself. A typical workshop is ordinarily a revenue producing subpart of a larger organization or facility which provides rehabilitation or education services. The proceeds from the workshop usually cover its operating expenses, and its "profit" or surplus provides income for the other rehabilitation and training activities of the facility, as well as salaries for workshop management. Indeed, a National Federation of the Blind survey of the 1977 income tax returns of 1/3 of the workshops

serviced by the National Industries for the Blind, showed that 70% of those workshops had excess income over expenses - and many of these were very large surpluses. Moreover, I have been advised by the National Federation of the Blind that some workshops have major endowments, including one which had $55 million in its endowment according to its IRS Form 990.

6. The Impact of H.R. 3866 will not be Distributed Evenly Throughout the $10-15 Billion Per Year Small Business Program, but will be Narrowly Concentrated Among a Few Product Areas.

The impact of H.R. 3866 will not be felt uniformly or distributed evenly throughout the small business set-aside program, but only in those lines of business where workshops are in direct competition with small businesses, such as in textiles, furniture, medical devices, small assembled wood and metal products, etc. These and other family owned companies which depend upon government procurements in the limited areas where workshops are capable of competing are the particular businesses which will suffer. Many of these companies devote 100% of their operations to federal procurement, and have no commercial business to fall back upon.

The total extent of that area of procurement in which these companies participate is negligible in comparison to the 10 to 15 billion dollars a year estimated to be devoted to the entire

small business set-aside program. Moreover, that small share has already been seriously eroded by Javits-Wagner-O'Day Act actions. Exclusive assignments to workshops under the Javits-Wagner-O'Day Act program have grown by about $25,000,000 - $30,000,000 a year. Last year alone, government procurements under the Javits-Wagner-O'Day Act amounted to more than $267,000,000 -- almost all of which would otherwise have been awarded competitively to small businesses. When considering that workshops are already eligible to bid competitively on other unrestricted federal procurement contracts, the ample amount of government procurements available to workshops appears to obviate the need for H.R. 3866.

In addition, the small business share of government procurement has been further eroded by the Federal Prison Industries ("FPI") Program. 18 U.S.C. §4121-4128. Under that program, a corporation wholly owned by the United States government employs convicts in federal prisons to produce commodities under exclusive non-competitive procurements. Once an item has been added to the FPI "Schedule," a procuring agency can no longer purchase the item commercially. Most of the items now produced by FPI are those which small businesses would ordinarily provide under the small business set-aside program.

Finally, the share of government contract work ultimately awarded to small businesses is dependent upon the "rule of two" -- that is, federal government officers must set-aside for small business any contract expected to generate bids from at least two responsible small businesses offering reasonable prices. The Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget has recently commenced efforts to weaken the "rule of two." If the OFPP effort succeeds, the overall size of the small business program will shrink generally, and the small business which would face competition from workshops under H.R. 3866 would also face direct competition from large businesses, and potentially from workshops as well.

All these intrusions upon the share of government procurement contracts actually at issue with regard to H.R. 3866 militate against adoption of the bill.

7. Adoption of H.R. 3866 will Perpetuate Inequities for Blind and Handicapped Employees of the Workshops.

Although organized workshop "management" has voiced support for H.R. 3866, there are doubts about whether this bill will actually benefit workshop "labor." The National Federation of the Blind (NFB), however, has spoken out on behalf of blind workshop employees. As the largest blind membership organization in the country, with over 50,000 members, NFB has noted that workshops routinely deny their workers benefits granted to

employees of small businesses, such as minimum wage projections. If workshops wish to have the advantages accorded to small business, NFB has argued and we concur, they should be willing to accept the accompanying burdens, especially with regard to treatment of their labor force. H.R. 3866 does not address the issue of workshops paying minimum wages and treating employees as small businesses are required.

CONCLUSION

In conclusion, the individuals and families whose livelihoods depend on fair and open competition for small business government contracts would be seriously injured by this legislation, while there is no meaningful assurance that more jobs would be created for blind and handicapped workers. In addition, the resulting contract awards to workshops would further erode the extent to which such work is available to small businesses, a competitive market already shrunken by the $267 million in contracts annually assigned to workshops exclusively under the Javits-Wagner-O'Day Act.

While we support the laudable purpose of providing employment opportunities for those otherwise unable to work, it should be kept in mind that small businesses contribute to this end by complying with the Rehabilitation Act, which requires

federal government contractors to recruit, hire, and promote the disabled. In addition many small businesses provide work for the handicapped by subcontracting work to workshops, hospitals, and clinics.

It should also be kept in mind that the small business set-aside program was designed to increase opportunities for small businesses to participate in government procurement. Implementing the goal of providing employment for handicapped persons need not and should not obscure that purpose or prejudice that program, as would occur if H.R. 3866 were enacted in its current form.

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